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ABSTRACT

The U.S. Senate Committee on Indian Affairs heard testimony on the proposed reauthorization of the Elementary and Secondary Education Act (ESEA) as it relates to American Indian education. ESEA incorporates virtually all major programs constituting federal aid to education; of particular concern to American Indians and Alaska Natives is the title called the Indian Education Act, as well as titles providing for the education of economically disadvantaged children, bilingual education, and impact aid. Statements were received from U.S. Senators, administrators of the Bureau of Indian Affairs (BIA) and the U.S. Department of Education, and representatives of regional and national Indian education associations. Topics and issues discussed included mechanisms for developing tribal and BIA standards consistent with Goals 2000 standards, BIA budget preparation procedures, teacher salaries in BIA schools, parent participation in goal setting, the formula for allocating impact aid to public school districts serving Indian children, state-tribal relationships, Native language preservation and cultural maintenance, the definition of "Indian," appointment and status of the Director of the Office of Indian Education in the U.S. Department of Education, need for additional funding to BIA schools due to increasing student enrollments, eligibility of BIA schools for Chapter I funds, inability of tribal school boards to fire long-term BIA "status quo" employees at local schools, and needs for school construction and maintenance. An appendix contains additional materials on these topics as well as program descriptions, funding formulas, and information on the need for Indian Technical Assistance Centers. (SV)

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ED 377 018

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REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

THE ADMINISTRATION'S PROPOSAL FOR THE REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

MAY 4, 1994
WASHINGTON, DC

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
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REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

WEDNESDAY, MAY 4, 1994

U.S. Senate,
Committee on Indian Affairs,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Campbell, Wellstone, and Kassebaum.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The Chairman. The committee convenes this morning to receive testimony on the reauthorization of the Elementary and Secondary Education Act of 1965, an act which incorporates virtually all of the major programs constituting Federal aid to education.

The administration's proposal for the reauthorization has been introduced in the Senate as S. 1513 and referred to the Committee on Labor and Human Resources. One title of that bill, the Indian Education Act, is explicitly within the jurisdiction of this committee, and our expectation is that much of the testimony received this morning will be on that title.

Other titles of the proposed reauthorization, however, are of interest and concern to American Indians and Alaska Natives. These include title I, which authorizes grants to schools whose student populations live at or below poverty levels; title VII, which authorizes grants for bilingual education; and provisions authorizing Federal payments to schools attended by children residing on Federal or trust lands. As all of us are aware, impact aid payments make up the largest single contribution the Federal Government makes to public schools on or near Indian reservations.

Even though this committee has forwarded recommendations of tribal educators on these and other provisions of the act to the Committee on Labor and Human Resources, testimony addressed to other titles is entirely appropriate, given the importance of those titles to the education of America Indians and Alaska Natives.

The House companion measure, H.R. 6, has also been identified as a subject of this hearing. That is because the text of H.R. 6 incorporates a substantial number of the recommendations that have been made by tribal educators. It is only the House bill that includes 100 pages of provisions affecting education programs of the BIA. While virtually all of these pages would simply reenact one title of Public Law 95-561, there are perhaps a dozen provisions which are new.

So in closing, let us look ahead. Based upon the testimony received this morning and letters from tribal educators, the committee intends to propose amendments to S. 1513 before the bill is taken up by the Senate following the Memorial Day recess.

Finally, as a courtesy to the Administration, I have scheduled Administration witnesses to constitute the first two panels, but I would like to make a request that they—unless their schedules prevent their doing so—remain to hear the testimony of tribal educators.

Before I call upon the first panel, Senator Wellstone.

STATEMENT OF HON. PAUL WELLSTONE, U.S. SENATOR FROM MINNESOTA

Senator **Wellstone**. Thank you, Mr. Chairman.

I will keep my remarks very brief.

Mr. Chairman, I am very interested in the focus of today's hearing as a former teacher, and I am on the Committee on Labor and Human Resources as well, so I have an opportunity to look at the reauthorization of the Elementary and Secondary Education Act in a number of different ways.

If I had to raise just a few concerns at the beginning, one of them would be—and I raise these now because, as is sometimes the case, I have a conflict this morning with a couple of other gatherings that I must attend.

One has to do with the role of the parents in Indian country and exactly what the role of parent committees will be in the actual decisionmaking process. It seems to me that that is critically important. I have heard some concerns from Indian country around that question.

Another has to do with the consolidation of the technical assistance centers, how they will work, and who gets defined as experts. Again, I think this has more to do with whether or not the people in the communities feel as if they are directly involved in the decisionmaking loop. Then finally, the age-old question I would raise, Mr. Chairman, has to do with the funding levels. That is always a question, but I continue to really receive some powerful and eloquent testimony from people as to the amount of money we spend per student and how difficult it is to work within those parameters. Even if there is not anything directly, I have to keep raising that question over and over again.

I thank you for the hearing and look forward to hearing from you all. I apologize for leaving early, but I will try to follow up on all testimony.

The **Chairman**. Thank you.

Senator Campbell.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO

Senator **Campbell**. Thank you, Mr. Chairman. I was once a teacher and taught in both Indian programs and community schools that had large Indian student levels. I am still active as a member of the American Indian College Fund, so I think possibly I know a little bit about the problem we have in the never-ending quest for funds. As my colleague has already stated, I too am concerned about the funding level.

Although education was not really on the agenda the other day when the tribal leaders met with the President, I think if you talk to almost any tribal leader you know that education is really the key to an awful lot of success or failure, depending on whether or not educational opportunities are there or not, particularly on reservations.

I am encouraged with this hearing and know that H.R. 6 includes provisions that will allow the BIA and Indian students to develop and achieve the goals that we're supposed to be trying to put in place for Goals 2000. I am obviously very supportive and thanks for conducting this hearing.

[Prepared statement of Senator Campbell appears in appendix.]

The CHAIRMAN. Thank you very much, Senator.

I now call upon the first witness, the director of the Office of Indian Education Programs of the Bureau of Indian Affairs, Dr. John Tippeconnic. He will be accompanied by the deputy director of the Office of Indian Education Programs, William Mehojah.

STATEMENT OF JOHN TIPPECONNIC, DIRECTOR, OFFICE OF INDIAN EDUCATION PROGRAMS, BIA, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC, ACCOMPANIED BY WILLIAM MEHOJAH, DEPUTY DIRECTOR, OFFICE OF INDIAN EDUCATION PROGRAMS

Mr. TIPPECONNIC. Thank you. Good morning, Mr. Chairman and members of the committee.

I am pleased to be here this morning to present the views of the Department of the Interior on H.R. 6, the Improving America's Schools Act of 1994. We strongly support the purpose of H.R. 6, to extend for 5 years the authorization of programs under the Elementary and Secondary Education Act of 1965. We also support S. 1513, the Administration's Elementary and Secondary Education reauthorization proposal. However, our comments will be directed to H.R. 6, as passed by the House, because S. 1513 does not include the reauthorization of Bureau of Indian Affairs' education programs.

Although we support H.R. 6, we have some significant concerns relative to Title III, part F of the bill and would like to address these concerns. We strongly recommend that they be addressed to enhance the benefits to be derived from these programs and increase the involvement and participation of tribes, Indian schools, school boards, and the Indian children being served.

We recognize the need and agree with the requirement to coordinate the development of our standards with those developed and implemented pursuant to the Goals 2000 Educate America Act of 1994. We believe the BIA should only develop content, performance, and opportunity to learn standards as prescribed in Goals 2000.

H.R. 6 would require that we publish our standards within 18 months of enactment and coordinate them with State plans under Goals 2000. State plans could take over 2 years to develop. We are concerned with the conflicting timeframes contained in the bill. It is unreasonable to require the BIA to submit a plan on July 1, 1995 indicating how it intends to meet standards that are not required to be finalized, if enacted today, until November 1996. We are concerned about that timing. Instead, we should be given an opportunity to substitute an interim plan for achieving BIA standards until Goals 2000 standards are available.

We believe that the annual reporting of the progress that we make toward meeting the standards may also become burdensome. Instead, we propose reporting on a 2-year cycle as to how we plan to implement all applicable standards. We recommend requiring plans to bring schools up to the new revised BIA minimum standards or to the school's State standards, which will be consistent with Goals 2000 standards when they are available. Also, we recommend adopting a process which will result in a fewer number of basic education standards for BIA schools.

H.R. 6 also proposes that a tribal governing body can submit to the Secretary a proposal for alternative standards and such revised standards shall be established and implemented by the Secretary. To build as much flexibility as possible for the tribes in developing and implementing standards, we recommend revising the language to indicate that standards could also be established and implemented by tribal governing bodies.

H.R. 6 also calls for the development of standards and procedures for the closing, consolidation, and substantial curtailment of schools. The bill proposes that affected tribes shall be afforded the opportunity to comment whenever closure, transfer, consolidation, or substantial curtailment is under active consideration or review. We support the opportunity for full and active tribal participation in such cases, but we would recommend that in cases where the Secretary may need to close a school for health, safety, or declining enrollment reasons, the Secretary should also have that authority to do so.

H.R. 6 proposes the process for approval of an application for the awarding of a grant or a contract for a school. To ensure that funding of new schools does not adversely affect existing schools, we recommend linking the application process with our budget process.

Concerning the national criteria for dorm standards, we have some of the same concerns as for academic standards. They are very similar and deal with timing, reporting, the study that is being proposed, and closures. Given that the BIA has already published criteria for dormitory situations, we recommend using the phrase "revision of existing criteria".

The section on facilities construction would require the Secretary to submit a plan to Congress by January 1, 1996, to bring schools up to the health and safety standards and to publish, within 6 months of enactment, regulations to establish priorities for school construction. This section outlines procedures required to close schools that do not meet health and safety standards. We support the intent of this section of the bill. Many of our schools are in need of repair and of renovation to bring them up to minimum safety and health standards.

For BIA schools that are temporarily closed or consolidated, or programs of a BIA school that are to be curtailed due to conditions that constitute immediate hazard to health and safety, we recommend including provisions requiring the development and implementation of a plan to ensure continuity of services being received by the affected students.

A Concern of the allotment formula, is the requirement for the Secretary to conduct a study to determine the feasibility of changes from a weighted student unit to a school-based budget system which is very limiting. We believe it narrows the options for change in the formula to a pre-determined outcome. We recommend that the scope of the study be flexible enough to examine other possible options in addition to the school-based budget.

The Department opposes special funding for the Richfield dormitory in Richfield, Utah, as would be provided by H.R. 6. We should not set a precedent in this case by funding the basic operations of a public school. No other State has asked for or required such payments. This school district receives Johnson-O'Malley Act and impact aid funding as well as State funds.

Budget preparation and submission is another concern. We oppose this section of H.R. 6 because it would alter the budget preparation and submission process, and in doing so undermine the authority of the Secretary of the Interior. It is inappropriate for legislation that transfers the Secretary's authority to determine the adequacy of the DOI's budget as it relates to the study to be undertaken by the National Center for Educational Statistics.

In effect, the Secretary of Interior's authority to determine funding priorities would be curtailed. The Secretary of Education, who has no authority to administer Interior programs, would be recommending funding levels for the Department of Interior without assessing competing priorities.

The bill requires the National Center for Educational Statistics to conduct a study. The Secretary of Interior should have the flexibility to choose the best qualified entity to conduct the study, although the Secretary may wish to conduct such a study in consultation with the Secretary of Education. In addition, it is unclear what the phrase "achieve academic and residential programs" means. This phrase needs to be clarified.

With regard to the proposed division of budget analysis, further study is needed to determine whether the creation of a separate office would be beneficial. Given the downsizing and FTE reductions taking place in the Department, the creation of such an office could only take place by reducing BIA personnel elsewhere. We oppose including such a provision in law.

With regard to uniform direct funding and support, the fiscal year 1995 budget proposes language that would allow funding to be based on a prior year student count. We recommend that such language be included in the authorizing language. We continue to support the broad goal of this language, which is to provide schools with information as to their funding level at the beginning of the school year. It is our intention to work with the tribes to determine an appropriate implementation method.

We oppose the method of payment as specified in this section of H.R. 6. The House-passed bill requires the BIA to make two payments to grantees, the first on July 1 and the second by December 1. Funds would not be available for obligation until July 1st. It would not be possible to make a payment to grantees on the same day funds are obligated. We would recommend that the language be modified so that the July payment is to be made no later than July 30 of each year.

The bill states that the provisions of the Prompt Payment Act shall apply to payments required to be made under this section. The Prompt Payment Act applies to contracts for the acquisition of property or services and agreements. The provisions do not apply to grants. Prompt payment is based on the invoice date from the contractor billing for goods and services already rendered or for progress payments on a construction contract. Grant schools receive payment in advance of providing a service, for example, operating a school for a semester. Therefore, they should not be entitled to receive interest on payments for services that are not yet provided.

More problematic, the Prompt Payment Act states that "agencies shall pay late payment penalties out of amounts made available to carryout the program for which the penalty has incurred." This means that school operation's funds are the source of interest payments. Therefore, it would be necessary to retain a portion of the school operation's funds to pay interest penalties rather than distributing all available funds to eligible schools. The Prompt Payment Act does not authorize the appropriation of additional amounts to pay penalties.

We recommend adding a provision to the bill that would allow school boards to establish salary schedules other than the Department of Defense schedule now required of BIA-operated schools. The DOD pay schedule has served its purpose and we believe that all BIA-funded schools need the flexibility to determine their own salary schedules.

Finally, Mr. Chairman, we strongly support many of the provisions of H.R. 6 and the recently passed Goals 2000 legislation. We firmly believe that provisions of H.R. 6 can be made more effective by including in the legislation a statement of purpose requiring all children and youth to attend and learn in schools. We believe that true education reform and school improvement requires communities and parents to take an active role in setting the goals for their schools and children.

For Indian country, this discussion and debate must fully involve tribal governments as well as communities and parents. The history of school reform in America illustrates that past reforms have failed, even though they have been worthwhile, because communities and parents have not been meaningfully involved in the design of their local education programs.

This concludes my prepared statement. We will be glad to answer any questions the committee might have.

[Prepared statement of Mr. Tippeconnic appears in appendix.]

The **Chairman**. I thank you very much, Dr. Tippeconnic.

About 3 decades ago, surveys indicated that the career of first choice of college students was in the teaching field. So teachers' colleges were filled. Today, it is just the opposite. Teachers' colleges are filled with students who cannot qualify for engineering or for medicine or for law. Sadly, those are the facts. The survey also indicated that the main reason for this change is the pay that teachers can anticipate.

In Indian country, in every category, pay has been the lowest. In the Indian Health Service, for example, DOD doctors who do perform the same functions as IHS physicians get the highest pay, the pay for Veteran's Administration [VA] doctors is just below that, and far below that is the Indian Health Service. We wonder why we cannot attract doctors to the Indian Health Service. DOD nurses receive the highest pay, then the VA nurses, then the IHS nurses.

So the Congress decided that education was very important and we decided to lift the pay scale for teachers to the DOD level. Now you are saying that you want flexibility the rate of pay for teachers in Indian country, which in the jargon of bureaucrats means to bring it down. It is not flexibility to raise pay rates.

Why?

Mr. TIPPECONNIC. The difficulty with the pay scale has been that the BIA-operated schools, as you well know—spend a large part of their budget—upward of 90 percent and more in many of our schools—and the DOD salary eats up our budgets in those schools. There is little money left over to run programs.

The CHAIRMAN. Why do you not make an effort to get more money to run the programs?

Mr. TIPPECONNIC. We have made efforts to try to get additional dollars to——

The CHAIRMAN. Zero funding for construction?

Mr. TIPPECONNIC. That is our request this year, yes.

The CHAIRMAN. Zero funding for repairs and alteration?

Mr. TIPPECONNIC. Yes.

The CHAIRMAN. That does not demonstrate much effort.

Mr. TIPPECONNIC. Mr. Chairman, the decisions that we made concerning the budget were very difficult decisions, as you well know, given the constraints and limitations under which we were placed. Tough decisions had to be made and those decisions were made. From all indications, those kinds of constraints are going to be there tomorrow and on into the future. To have that kind of a constraint and have a salary schedule that really takes the majority of our budget creates real problems in our schools.

We not only want to allow some flexibility, Mr. Chairman, but we also feel that local decisionmaking and local control comes into play in that type of situation. Our grant and contract schools have that kind of authority to determine their own salary schedules. We feel that we should be the same across-the-board in all our schools. The BIA-operated schools should have the same type of authority.

The CHAIRMAN. A few days ago, last Friday, tribal leaders from throughout this land gathered here in Washington, DC to meet with the President of the United States. These tribal leaders reminded the President of the concepts of sovereignty and trust responsibility. This status and this relationship are based on treaties, the laws of the land, and the Constitution.

Do you not think there is a special obligation, as promised in our treaties?

Mr. TIPPECONNIC. Yes, I do. I do think that the Federal Government has a special obligation for the education of Indians.

The **Chairman**. Do you believe the authorization you are requesting and the budget that you are requesting lives up to this trust responsibility?

Mr. **Tippeconnic**. If we look at the indicators, which include the need that exists in various program and is articulated by our customers, then we probably don't live up to the need, no.

The **Chairman**. May I now go to another question?

You have recommended that we authorize payments to be based on prior year student count.

Mr. **Tippeconnic**. Yes.

The **Chairman**. Was this proposal discussed at consultation meetings with tribal leaders?

Mr. **Tippeconnic**. Yes, it was.

The **Chairman**. And is it true that three-fourths of them were opposed?

Mr. **Tippeconnic**. That is correct.

The **Chairman**. So in the face of that, you are saying that you are not going to listen to consultation?

I raise this because throughout last Friday's historic gathering, the President of the United States and tribal leaders all spoke eloquently about consultation and the importance of consultation. In my mind—I have no idea what your definition is—if consultation involves just listening or advising one of actions taken, it is not consultation. I think it is rather sad that you would take this step of asking, "What do you think about this?" and then when three-fourths say it is no good, you turn right around and say, "Sorry, boys."

Why did you do that in the face of the massive opposition?

Mr. **Tippeconnic**. Mr. Chairman, we did it because of the concern we have heard from some of our schools about the need to know their budget early in the year, at the beginning of the school year, so that they could do some adequate budget planning for the remainder of the year. That concern is there.

We put together this language in the 1995 budget request that indicated we would do our funding on a prior year count. We came up with a plan. The plan was to base the budget on a prior year count that took place twice, in the spring and in the fall, and then we would provide funds July 1 of a given school year and then go out and do a count in September of a current school year and make an adjustment only for those schools that had a 10-percent increase or more. That was the plan.

We believe in consultation. We support consultation. We fought to take this plan out to consultation during our March process. The difficulty was that we went out at the last minute. We went out with a letter form rather than our consultation booklet. Yes, people reacted and 70 percent said no. Part of that reaction was the concern about consultation, about the lateness of it, and some of the things you mentioned, Mr. Chairman.

We feel that we still need to address the issue. We would like to do a dry run this coming school year since we have that time to do that, and then we would like to go back out with information and data and get an opinion from people, in addition to what we have now. We feel that we will have better information to provide individuals on which they can base their judgment.

The **Chairman**. I believe what you are proposing is rather unique in the teaching field. I am certain that you are well aware that the largest percentage of drop-outs occurs in Indian country, much more than in the inner cities.

Mr. **Tippeconnic**. Yes.

The **Chairman**. So when you take a prior year count, that drop-out is considered. So it is a small number now. In other school systems, when the drop-out increases, they add money to make certain that drop-outs don't occur again. But in Indian country, if you have drop-outs, we penalize that system and reduce the amount we are going to provide them.

So what happens? You will have less qualified teachers, zero funding for construction, zero funding for repairs. Don't you think that when we have this negative sign of drop-outs that we should do something about it instead of punishing them?

Mr. **Tippeconnic**. Yes, I do. I think we should address the drop-out problem, as well as other problems that exist with our Indian students.

Mr. Chairman, I also believe that in order to address the drop-out problem and the attendance problem and other problems that exist, we need to look at the situation from a broad perspective. One thing that I mentioned that we recommend is that we talked about the purpose of education. We explore that purpose of education with those we are serving, our clients, the parents, the tribal leaders, and we define the type of education they would like to see for their students. We act upon that.

I think we have an opportunity to act on those kinds of local initiatives when we look at the broader picture. If we just look at the proposal to fund on a prior year, I appreciate your concerns. But when we look at the broader picture—we look at Goals 2000, we look at the totality of H.R. 6, we look at our own school improvement efforts going on in the BIA right now—when we look at all of that, we address things like making our schools more effective. We talk about educational leadership. We talk about how we get parents involved more. How do we make the schools better for students? How do we keep students there?

So it is not just a funding problem. I think there is a broader problem that we have different opportunities and different ways to address.

The **Chairman**. I suppose we should have another forum for such discussions.

Senator Kassebaum.

STATEMENT OF HON. NANCY LANDON KASSEBAUM, U.S. SENATOR FROM KANSAS

Senator **Kassebaum**. Thank you, Mr. Chairman.

I would like to associate myself with the comments of the chairman regarding the importance of education and teachers. As everybody is well aware, the Indian Nations At Risk Task Force and the White House Conference both recommended, of course, giving greater emphasis to bringing Native American teachers in and they serve as role models as well. That pay has to be there in order to continue to attract everywhere the best and the brightest into teaching, but particularly into Indian country. Of course, I am pleased that tribal colleges such as Haskell in Lawrence, Kansas and others are moving into education programs that I think will help us there. But it is slow.

As the chairman says, it is so frustrating. To me, that has to be one of the top priorities. As much as we want to keep students there, we need the teachers there that holds respect of learning and importance of learning.

I have some sympathy for what you are trying to do, Dr. Tippeconnic, in struggling with a budget that obviously is being tugged and pulled in many different directions.

I guess my one urge is to just keep as a top priority teacher education for those Native American teachers who can really add so much. And secondly, I would like to ask your thoughts on the efforts that have been suggested to perhaps fold in the Office of Indian Education. Where do you think that fits best? Where has it worked, as you hoped it might work? There have been some suggestions for change.

Mr. TIPPECONNIC. First of all, on your comments about teacher education and the fact that places like Haskell are actively engaged in teacher preparation, we do support that. We see an opportunity that exists in tribal colleges, in particular at Haskell, to develop effective teachers of Indian students. They can develop a program that is based upon the needs of students and focuses in upon learning styles and teaching styles that Indian students bring into classrooms.

We are encouraged by that. Yes, it is difficult. Yes, it is slow in developing, but it is something that we are working toward and pursuing. Hopefully, we will move along at a quicker pace.

Your second concern about where the Office of Indian Education fits, could you elaborate a little more? Are you talking about the Office of Indian Education in the Bureau?

Senator KASSEBAUM. Right, and/or in the Department of Education. Perhaps it is not something that is particularly important in the long-run, but I think there may be some confusion in the minds of some. I guess at one point—and perhaps this is best left for Dr. Payzant—the Department of Education was considering providing greater flexibility to the Bureau of Indian Affairs to handle Eisenhower program and other Chapter I initiatives. Is this still a possibility? Do your regard this as something that would be helpful?

Mr. TIPPECONNIC. Yes, I do. I regard that as something that will be helpful to BIA schools to have that kind of flexibility to utilize funds in some comprehensive, integrated approach model.

I also feel that the relationship between the two offices probably can be enhanced and can probably be improved in some way. As you well know, we serve different students, but we also serve the same students in a lot of cases. Just a working relationship that coordinates resources under these kinds of severe limitations would benefit the students.

Senator KASSEBAUM. Probably different students but similar problems.

Mr. TIPPECONNIC. Yes, very similar problems.

Senator KASSEBAUM. I like your comments on communities and parents. They need to be involved in setting goals. I think this is particularly important in Indian country where many times we have developed a very paternalistic attitude about what is important. My concerns, actually, about some of the reauthorization language for elementary and secondary education is that we are getting more and more prescriptive from here. My only reservation, although I would agree with some parts of H.R. 6, is that the additional language becomes that much more prescriptive, to a certain extent. It is balancing out the need for flexibility that you spoke to as well as making sure, I suppose—as we always tend to feel we need to do—that the money is being used as intended and is being used wisely.

So I think from the standpoint of being on the Labor Committee where we will mark up the reauthorization, I think the feeling is that whatever is recommended from this committee will be pretty much what is accepted in the reauthorization. I value your comments. Thank you.

Mr. TIPPECONNIC. Thank you.

The CHAIRMAN. Thank you very much.

I thank you very much, Dr. Tippeconnic and Mr. Mehojah.

The CHAIRMAN. May I now call upon the Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education, Thomas Payzant; and the Director of the Office of Bilingual Education and Minority Language Affairs, U.S. Department of Education, Dr. Eugene Garcia.

They will be accompanied by the Director of Impact Aid Programs, Charles Hansen; and the Director of Program Support, Cathie Martin.

Mr. Secretary, welcome, sir.

STATEMENT OF THOMAS PAYZANT, ASSISTANT SECRETARY FOR ELEMENTARY AND SECONDARY EDUCATION, DEPARTMENT OF EDUCATION, WASHINGTON, DC, ACCOMPANIED BY EUGENE GARCIA, DIRECTOR, OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGUAGE AFFAIRS; CHARLES HANSEN, DIRECTOR, IMPACT AID PROGRAMS; AND CATHIE MARTIN, DIRECTOR OF PROGRAM SUPPORT, OFFICE OF INDIAN EDUCATION

Mr. PAYZANT. Thank you, Mr. Chairman, for the opportunity to be with you today to discuss the major provisions of the Administration's proposal for the reauthorization of the Elementary and Secondary Education Act and the bill, H.R. 6, recently passed by the House.

I am going to focus my comments on the efforts of this legislation to improve the education of American Indian and Alaska Native students. I would like to place my full statement in the record and just make some summary comments, if that is all right with you.

The CHAIRMAN. Without objection, your prepared statement will appear in the record.

Mr. PAYZANT. Thank you.

Our proposals are connected by a major theme, providing greater opportunities for all students, those who are limited English proficient, those who are poor, those who are homeless, and those who may have other special needs. Every student must have the opportunity to achieve to high quality and challenging education standards.

Our reauthorization proposal for Indian education would ensure that Indians benefit from national education reforms and receive every opportunity to achieve to the high academic standards we expect of all students. The reauthorize proposal would support programs of direct assistance for the education of Indian children and adults, the training of Indians as educators and in other professions serving Indian people, and it would also provide for research, evaluation, and data collection.

In general, the House bill follows the administration's proposal for Indian education, but there are a few major differences and I would like to highlight several of them.

H.R. 6 does not include authority for an Indian- controlled schools program. Our proposal does. H.R. 6 would continue a separate gifted and talented program authority. We propose to make it a part of a general grant authority that would provide more flexibility to do a number of things that are needed to serve Indian young people well. H.R. 6 maintains a separate fellowship program. We propose to fold the fellowship program into a broader professional development effort that would give Indian tribes, organizations, and collaborative arrangements with institutions of higher education to provide fellowships as well as professional development for those who are in school serving Indian children today. H.R. 6 does not include authority for a State grants program. The Administration's proposal does.

Let me just make a few brief comments about several major parts of this reauthorization proposal.

In title I, our proposal would cover eligible children, including Indian children, and they would benefit from a new approach. Under current law, the focus in Title I has been on a basic skills program which is often driven—as Secretary Reilly likes to comment—by a conspiracy of low expectations. The program tends to be remedial in nature and has not achieved the results that we would like.

In our new title I proposal, we are saying that all students ought to have the opportunity to reach challenging standards in the core academic subjects. There should no longer be a two-tier system, one which is a lower tier for chapter I children and Indian children who are in chapter I programs and a higher tier for those who are not served.

Our bill would also require States to integrate title I into an overall strategy for achieving State and local education reforms. Under our proposal, the share of funds for the BIA and outlying areas would be 0.8 percent of the amount appropriated under the basic and concentration grants combined. The House bill, as I am sure you have noted, would retain the 1 percent set-aside that is in current law and apply it against the combined total of basic concentration and a new targeted grants program created in the House bill.

I would like to make a comment or two about impact aid because that is very important to Indian students.

A substantial share of the impact aid funds is distributed each year to school districts that serve Indian children. The primary objective of our impact aid proposal is to simplify on the one hand and increase equity in the distribution of impact aid on the other for Federally connected children. We proposed a new formula for basic support payments with only three factors in it: the number Federally connected children, the average cost of education in each State as measured by the average per pupil expenditure in the State, and the share of expenditures provided by local resources in each State. Of course, children living on Indian lands would be weighted 25 percent more heavily than other children under our formula.

H.R. 6 adopts some aspects of our proposal, but provides a more complex formula for Federally connected children. In brief, if appropriations are insufficient to provide payments for the full cost of the H.R. 6 formula, it would reduce payments based on the percentage of Federally connected children in each school district and the share of each district's budget that its full entitlement would comprise.

H.R. 6 also includes a separate authority for supplemental payments for children with disabilities. That is similar to our proposal. It would also preserve in modified form the current construction authority. Unlike our bill, it would not provide formula payments for construction in heavily impacted Indian districts.

I would like to also make a comment or two about bilingual education. Dr. Garcia is here to respond to questions that you may have about that portion of the bill.

The changes we have proposed for bilingual education are intended to ensure that limited English proficient students, including those who are Indians, benefit from State and local education reforms and that these students have the opportunity to meet the challenging State standards developed for all students. The House bill would also create a curriculum development authority for instructional materials in Native American, Native Hawaiian, and other language for which instructional materials are not now available.

Otherwise, H.R. 6 is very similar to our proposal for bilingual education.

In conclusion, I want to emphasize that our reauthorization proposal embodies our strong commitment to the education of American Indian and Alaska Native children and adults. As I stated earlier, our proposal recognizes that support for State, local, and tribal activities through a restructured Federal effort is necessary to ensure that all students achieve the high standards.

Mr. Chairman, this concludes my remarks. I would be happy, along with my colleagues, to respond to any questions you may have.

Thank you.

[Prepared statement of Mr. Payzant appears in appendix.]

The Chairman. Thank you very much, Mr. Secretary.

Before I proceed with questions, I would like to recognize with great pleasure a group of very important visitors in this hearing room. They are the primary beneficiaries of the measures we are discussing today. They are high school students from BIA-funded schools. I would like to welcome students from Lower Brule, South Dakota; Chemawa, Oregon; and Tiospa Zina, South Dakota.

Would you stand, please?

[Applause.]

The **Chairman**. We hope we will do you justice. We are trying our best.

Dr. Payzant, in your prepared statement, you cited the very horrendous statistics that we find in Indian country—economic statistics and educational statistics—yet in title I you are recommending a reduction in the set-aside for outlying areas and BIA programs by 20 percent. Why is that?

Mr. **Payzant**. Mr. Chairman, the 0.8 percent represents the number of poor children that are in Indian country and outlying areas. In our view, it would bring more equity to the distribution of the dollars for poor children.

Having said that, the amount that we propose for the BIA under that 0.8 percent would still have the average share going to a child served through the BIA being a bit higher than the average share to children served elsewhere.

The **Chairman**. How much higher?

Mr. **Payzant**. About 25 percent higher with the 1 percent set-aside. It would be less than that if it is just the 0.8 percent.

We will be happy to get the exact figure for you.

The **Chairman**. I would appreciate that very much.

Why would the concentration grants for schools having high poverty population not be available to BIA schools?

Mr. **Payzant**. It is. In terms of the set-aside, the set- aside is computed based on both basic and concentration grants.

The **Chairman**. So it is available?

Mr. **Payzant**. Yes.

The **Chairman**. We had the impression that it wasn't.

Mr. **Payzant**. It is not currently in the current law, but it is both in the Administration's proposal and in the H.R. 6 legislation.

The **Chairman**. Mr. Secretary, tribal educators have been writing to us requesting that Bureau-funded schools be made eligible for all DOE programs that benefit public schools.

Would you support such a proposal?

Mr. **Payzant**. I believe, Mr. Chairman, that most all of the programs are available to children who are served in BIA schools.

The **Chairman**. According to tribal educators, that is not the situation. We expect to hear testimony to that effect in a few minutes.

Mr. **Payzant**. The exception would be in discretionary grant programs. If they are not local education agencies, they could not directly apply to the Department of Education for grants.

The **Chairman**. Then how about changing the law to make them local education agencies?

Mr. **Payzant**. I am not sure that the Federal Government could determine their standing as a local education agency. That is usually a State function in determining what serves as a local education agency within a State. I think the issue is whether or not the Federal Government should allow entities that are not LEAs to apply directly to it for discretionary grants.

The **Chairman**. Can we not, on the basis of our responsibility set forth in the Constitution and in treaties, just declare that Indian education should be, at the least, on par with other educational programs that we fund?

Mr. **Payzant**. I don't know the answer to that, but we will be happy to provide you with it.

The **Chairman**. I would think that our Native Americans, the first Americans, should be entitled to getting at least what I received when I was a child.

Mr. **Payzant**. I have no argument with that kind of commitment. In the programs that we do provide, we attempt to recognize the needs of Indian students and in many instances in our proposals we provide additional resources for Indian students to meet the needs that are very real. An example would be the weighting under our impact aid proposal that weights Indian students at a higher level.

So we are very concerned about equity issues, too, Mr. Chairman.

The **Chairman**. You have mentioned impact aid, and obviously impact aid is very important to Indian education. According to your tabulations, the assistance will fall from $260 million this year to $203 million in fiscal year 1995. Is that correct?

Mr. **Payzant**. Yes.

The **Chairman**. How would this be affected under the provisions of H.R. 6?

Mr. **Payzant**. I am going to ask Mr. Hansen to answer that.

Mr. **Hansen**. We don't know the exact number yet. We just received a data run that simulates the H.R. 6 formula. We didn't have that information available. I haven't looked at it.

My suspicion would be that under H.R. 6, since the formula remains relatively unchanged relative to the current formula, that the difference would be less than between what would occur under our formula and what would occur under the current formula. I don't know the exact number, but we can provide that for the record.

The **Chairman**. Mr. Secretary, we have received several letters from tribal governments objecting to State reviews and comments on applications for Indian Education Act grants. Is this important to the Department that we receive State reviews and comments?

Mr. **Payzant**. It is, Mr. Chairman, because what we are trying to do with the Goals 2000 Educate America Act and with our reauthorization proposal is develop a new partnership among the levels of government—Federal, State, and local—and to say to each of us involved in the commitment to improve teaching and learning for all children that we need to have a more comprehensive approach where we connect a number of efforts that have been fragmented in the past. We say high standards for all students. We mean all students. That means Indian students as well as every other student in America.

We believe that if the States are going to be accountable for a portion of that effort—a major portion—then we can't let them off the hook in terms of addressing all the students that reside within their State. They should be connected to LEAs that predominately serve Indian students just as to any other LEA and bring them in under the comprehensive effort of that State and all the districts in it to improve teaching and learning.

That is the reason we think it is important, in our proposal, to bring States in in a way they have not been in before.

The **Chairman**. Do you believe that under your process Indians would get a fair shake from States?

Mr. **Payzant**. Yes; I do because the States would be required in their overall plan to say how they are going to provide support and involve and include Indian students in their effort to enable all students to meet the standards of that State. They must be accountable for that.

The **Chairman**. I believe the next question should be for Dr. Garcia.

There is a section 7111 in H.R. 6, which is the special provision for Puerto Rico, recognizing the needs for limited Spanish proficiency and authorizes curriculum development and training to meet those needs. Does the Department support that?

Mr. **Garcia**. Yes, it does.

The **Chairman**. Would the Department support a similar provision for a person of limited Native American language proficiency?

Mr. **Garcia**. We believe it already does exist, Mr. Chairman, in the present provisions. Keep in mind that we are very interested in the title VII for children to meet the high standards. We believe that Native language and culture are a resource to achieving those high standards. We believe, essentially, in title VII that the option exists for American Indian and other native language groups to use the native language as a means to achieve those high standards. We believe that in this case that option already exists in our proposal.

We do not think a special provision is necessary.

The **Chairman**. In Puerto Rico, Spanish is the first language, is it not?

Mr. **Garcia**. Spanish is the language of the school.

The **Chairman**. And these would be assistance for non-Spanish students?

Mr. **Garcia**. That is correct.

The **Chairman**. Tribal educators are calling for preference in title VII grants for applications which promote proficiency in both Native American and English. Would you support that?

Mr. **Garcia**. We concur.

The **Chairman**. I would like to, if I may, Mr. Secretary, submit several questions for your consideration. These questions may require statistical analysis and numbers. At your leisure, if you could look them over and give us a response I would appreciate it very much.

Mr. **Payzant**. We would be happy to, Mr. Chairman.

The **Chairman**. What we have before us is very important. I hope we make the right decisions.

Thank you very much.

If the administration witnesses could remain while the tribal witnesses testify we would appreciate that very much.

The **Chairman**. Now may I call on the president of the National Indian Education Association, Phil Baird; the Executive Director of the National Advisory Council on Indian Education, Robert Chiago; and the Executive Director of the National Indian School Board Association, Carmen Cornelius Taylor.

Mr. Baird.

STATEMENT OF PHIL BAIRD, PRESIDENT, NATIONAL INDIAN EDUCATION ASSOCIATION, WASHINGTON, DC

Mr. BAIRD. Mr. Chairman and members of the committee, on behalf of the National Indian Education Association, I take this opportunity to extend our appreciation for being here. Along with the committee's sentiments, I also offer our welcome to the future Native leadership that are represented here. Among the Close-Up students.

My name is Phil Baird and I am president of the National Indian Education Association. I also wear the hat as cochair for the National Congress of American Indians Education committee. I am also a senior co-advisor for the American Indian Higher Education Consortium Student Congress. And most importantly, I am an enrolled member of the Sicangu Band of the Lakota Nation, also known by the 1934 Indian Reorganization Act as the Rosebud Sioux Tribe of South Dakota.

Mr. Chairman, several years ago you left us at the White House Conference on Indian Education. Your last comments articulated very pointedly the support for Native education and for Native educators and people involved with the education of Native people who are working hard at creating the changes that we need to strengthen Native education.

Specifically, I believe your comments at the end of the conference were that you awaited our marching orders.

I saw you last year at Reno at the NCAI convention and provided you with a brief update that we are in fact looking at and working hard with very little money but with a lot of heart and commitment to look at what we need to do to offer what we believe are changes to create a better education for Native people.

So I come to you and the committee to provide another update because we are here as partners to be involved with the challenge of school reform that this Nation and the Clinton Administration have embraced. As you well know, there are different players involved in looking at school reform in terms of Native education.

We have the Federal Government's involvement, particularly with the Bureau of Indian Affairs and the Department of Education. We also have a role of State government in being involved with over 85 percent of Native children in public schools. But we also have Indian nations in this country with sovereign rights and goals for self-determination that must include not only an educator's perspectives but also from Indian parents, Indian students, and Indian leaders of Native communities.

The underlying themes we are addressing today—much as we did with the White House Conference and much as we did with the Indian Education Act of 1972 and much as we did with the Johnson-O'Malley Act of 1934 and much as what was said in the 1928 Meriam report—we are talking about the need for change. The underlying principles we are dealing with involve Indian nationhood and strengthening tribal sovereignty, which is supported by the Constitution of the United States.

We also have as an underlying principle and tribal need to strengthen ourselves culturally. This not only benefits Native people, but in the spirit of dealing with cultural diversity issues globally, this strengthens all of us as human beings in this world.

More recently, we have resurfaced the issues of accountability, particularly looking at accountability from the perspective of standards. The questions we are dealing with today is, By whose standards are we going to measure success in Indian education?

I heard the assistant secretary talk about partnerships. He is right. In looking at the complex nature of Indian country and Indian education, that is exactly what we need. So what you will find in our NIEA's testimony that has been submitted for the record are our efforts to basically look at strengthening education by involving everybody in a partnership role. A concern that we have right now is that with both legislative reauthorization bills, along with appropriation bills, there is a very apparent exclusion of those entities which have a rightful role in strengthening Indian education, and that is tribal government.

So we come here today asking the committee—asking for the Federal Government, State governments, and tribal governments to look at these partnerships and to move away from the idea of State versus tribes, and more appropriately embrace a partnership between State and tribal governments.

I would like the committee to be aware that I believe there are misconceptions—and it is brewing in Indian country—that NIEA is creating a State versus tribal issue. NIEA is not pro-State or pro-tribe. We support the involvement of all players.

We understand coming out of the White House conference, particularly with Resolution 3-8, the need for States to be involved in Indian education and Indian educators are committed to understanding this. We also have within our organization an NEIA resolution that basically acknowledges the need for partnerships, particularly with State governments.

But our concern is that it is too obvious that tribal governments in many instances have been circumvented from the opportunity to describe and articulate what goals and what standards we are going to use to ensure the success of Native people. So we are asking the committee to be very vigilant to what I believe are very misguided perceptions and efforts to create a State versus tribe issue, rather than regard State and tribal governments as partners.

Specifically, I know that in the administration's title VI proposal they are talking about giving $1 million to State education agencies. State education agencies need that support, but I don't believe it is appropriate to take already limited title V funds or proposed title VI funds to provide to States. I think right now the opportunities for supporting State efforts are well-embodied in Public Law 103-227, Goals 2000 Educate America Act. We would very much support States receiving funding not from title V but under Goals 2000, specifically under sections 301, 305, and 306 that call for systemic change to include both State and tribal governments.

Again, we come here asking the committee to be very vigilant and support the need for partnerships that include both State and tribal government.

Specifically for title V programs, we very much appreciate the reinstatement of the cultural purpose of title V because that is very near and dear to our hearts. We are concerned about minimum amount of funds being provided through title V programs. We have articulated a proposal to create a base amount of money to support LEAs.

We also recognize that some schools, for any number of reasons, will not embrace title V resources or any resources for our native children. So we are proposing the opportunity for schools to come together in consortiums and allow through partnerships a way to address the special and unique cultural education needs of our children.

We know that again for a number of reasons schools will not access resources for Native students. In those situations, we ask for the flexibility and option for tribes, when approached by Native communities and Native parents, to be involved in the administration of title V programs. That option should be made available. I heard you use the word "flexibility" and I believe that is what we need in this case.

We have one particular school, Shakopee Public Schools in Minnesota, that has a title V program administered by a Dakota Tribe. So we know the partnership has been demonstrated and we know those things can work for title V programs.

We are concerned about the need to maintain the involvement of Native parents, particularly Indian parent committees—whether for title V, JOM, bilingual programs, Chapter I. We need to look at increasing and strengthening Native parental involvement, especially when we are talking about allowing the use of Indian education funds for schoolwide projects. We basically need some kind of connection with Native parents in those type of efforts in terms of schoolwide projects.

We need to continue education personnel development programs. You talked about teacher training. This has been the mainstay of title V-EPD programs. I am happy to report that we are seeing a steady increase—particularly on my reservation, the Rosebud—of Native educators being integrated and being employed in school systems. But you have to understand that we have only been after this for the last 20 to 25 years. Change comes slowly. We very much recognize that. So we need to maintain the flexibility of having both reservation-based and off-reservation-based teacher training through title IV-EPD programs.

We talked about Indian fellowship programs and the issues regarding American Indian opportunities in higher education. We need, again, to retain title V fellowships. I know the Education Department has been criticized for its inability to effectively run the title V fellowship program. NIEA offers a recommendation to contract out that program.

In terms of the title V Indian technical assistance centers, we have right now six centers that provide a myriad of resources from culturally-based curriculum development to teacher training to working with tribal education departments. Those centers are valuable, especially in places like the Dakotas, Alaska, and the southwest where you have rural isolation of schools. We have centers with Native education expertise, with the sensitivity for understanding public school systems, tribal education, and the BIA school systems. We need to retain that kind of expertise through separate Indian technical assistance centers.

Indian adult education, unfortunately, has been one of those orphans current among native education programs. We need to strengthen ourselves in this and bear down and strengthen the literacy among Indian adults. One of the things that I would ask the committee to consider down the road is a national study regarding the literacy of Indian adults.

I would be remiss if I left here without commenting about Native languages. You know that the Indian Nations At Risk Task Force said, and the White House Conference validated that Native language preservation, retention, and cultivation is one of our highest priorities. Mr. Chairman, you understand the principles of Indian nationhood and sovereignty. Native language is an attribute of nationhood. We support those program resources that would allow us as Indian nations, and would allow State educational systems, to work in partnerships to strengthen bilingual proficiency among our Native students.

There are many other things that I know my colleagues and others will be testifying about regarding BIA education programs. For the record, we have other comments in our written testimony. But so many times we have come here talking to you and the committee about the weaknesses, failures, and limitations among education programs. I would like to close our comments on a better note.

I bring to your attention a product of a partnership between Indian country and the Department of Education, particularly the Office of Educational Research and Improvement. Where we have spent a lot of time in the past dealing with one end of the spectrum encompassing the negatives, the deficits, the failures, or the weaknesses, we hardly ever have the time and the resources to deal with the positive end of the spectrum. I am happy to report that with the support of this committee and the Department of Education, we now in Indian country have a powerful resource guide to address the needs of our gifted and talented students. Again, commendations are in order for people like Beverly Coleman and Stuart Tonemah from Oklahoma. Their effort epitomize what it would take with little money to really be creative and to offer those valuable resources we need in Native education.

In closing, I heard you allude to the White House Summit held last Friday. We in Indian country have hope and guarded optimism, but we also know that the Federal agenda is full and that only a little piece of attention for education was discussed at the White House Summit. We are asking the committee to support the idea of a national listening conference for Native education and that we would have Secretaries Babbitt, Shalala, and Reilly listening to us talk about what we need for Native education.

I think in terms of looking at your remarks about the 1992 White House Conference—we are now, as Native educators, developing alliances with tribal governments, with the National Advisory Council on Education, with the National Congress of American Indians, and with AIHEC, ANCS, NISBA—you know the organizational acronyms. We want to begin forging ahead with a second

White House Conference. But we don't want just a White House gathering; we want a National Native Education Summit that would provide the opportunity for us native educators to pick up where we left off.

The Indian Nations At Risk and the White House Conference are the most recent and the most powerful products that we as Native people have been involved with. That is where we need to start. We are up to being involved in the partnerships. These must include State, Federal, and tribal governments.

In closing, I would like to say that in light of last week's events when President Clinton signed the Executive order that provides better access for Native people and freedom of religion, I bring to this hearing an eagle feather that was given to me by my people. I think the administration has demonstrated through its Executive order the cultural respect my ancestors have sought for a long time. In that spirit of hope and the optimism for positive change and working in partnerships, we close our comments at this hearing.

Pila mayelo'. Thank you.

[Prepared statement of Mr. Baird appears in appendix.]

The CHAIRMAN. I join you in your prayer that this is the beginning of a new age.

In that spirit, this committee is prepared to work with you to bring about this national summit, so let us get together.

Before I ask questions, I would like to call on Mr. Chiago and Ms. Taylor.

Mr. Chiago.

STATEMENT OF ROBERT CHIAGO, EXECUTIVE DIRECTOR, NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION, WASHINGTON, DC

Mr. CHIAGO. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I wish to express appreciation for being invited to appear before this distinguished committee to present testimony pertaining to the reauthorization of the Indian Education Act and the reauthorization of other provisions of the Elementary and Secondary Education Act of 1965 which may affect Indian children and adults.

Ever since the last reauthorization of the Elementary and Secondary Education Act of 1965, the National Advisory Council on Indian Education has been making recommendations which are pertinent to the current reauthorization of the act. The majority of these reauthorization recommendations are contained in our 19th Annual Report to the Congress. Copies of this report were distributed to every Member of Congress prior to the end of the last fiscal year. We find that a few of our recommendations are reflected in the H.R. 6 version of the Indian Education Act. One such recommendation is the comprehensive program required under section 6104(b) which requires that applications submitted under this section include a program plan for meeting the needs of Indian children in the local educational agency, including language and cultural needs.

Other NACIE recommendations incorporated into H.R. 6 include: Removing the requirement that NACIE review discretionary grant applications; the inclusion of a service obligation or payback requirement for the Indian fellowship and professional development programs; and the recommendation to remove "other organized group" from the definition of "Indian".

Rather than review all of the reauthorization recommendations made in our previous annual reports to the Congress, I am herein reacting to the H.R. 6 version of the Indian Education Act and to its other provisions which may have an effect on the education American Indians and Alaska Natives.

The National Advisory Council in Indian Education recommends a modification to the stated purpose of the Indian Education Act in section 6002. We recommend that the statement of purpose include provisions for the physical and emotional education related needs of American Indians and Alaska Natives. We have submitted a prepared statement with the actual wording in that prepared statement, which I would like to submit for the record rather than read the whole thing.

The CHAIRMAN. Without objection, your prepared statement will appear in the record.

Mr. CHIAGO. Specific provisions for meeting the physical and emotional needs of American Indians and Alaska Natives as well as their special education and culturally related educational needs would provide for a more holistic approach to learning. It is our understanding that unless specifically mentioned in the law, educational programs which provide some focus on the physical and emotional educational needs of Indian students may not necessarily be allowed.

NACIE is opposed to the amendments made in section 6102 which change from 10 to 20 the local educational eligibility requirement for the minimum number of enrolled Indian children needed for a formula grant program. Likewise, the Council is opposed to increasing a local education agency's total minimum Indian enrollment from 10 to 25 percent for a program under this section. This would disqualify 13 local education agencies currently receiving grants.

NACIE is also opposed to the establishment of a minimum grant amount. The establishment of a minimum grant amount would eliminate 41 projects currently operating under the $4,000 threshold or require that they become part of a consortium of local education agencies. The proposal to establish a minimum threshold gives the impression that this is being done for the administrative convenience of the Office of Indian Education and not necessarily to meet the educational needs of American Indian and Alaska Native students.

A subsection should be added to section 6102 to allow Indian tribes to be eligible for Part A grants if the local education agency does not intend to do so.

NACIE supports section 6104(b) with some slight modifications. Section (b)(3) should be amended to include "and funds" after the word "programs". Section 6104(b)(2)(b)(3) would be written as follows: "Explain how Federal, State, and local programs and funds, especially under title I of the act, will meet the needs of such students."

Section 6104(d) should be amended to require only that the application be submitted to the State education agency. It should not require that comments on the application from the State education agency be included with the application, which the local education agency submits to the Secretary. Such a requirement would delay the application and force an unnecessary burden on the State.

The proposed section 2 should be eliminated and replaced with the following: "If at least 50 percent of the Indian students served by the local education agency are members of a single tribe, or are members of a consortium of tribes, the local education agency shall provide an opportunity for the tribe or for the consortium of tribes to comment on the application before it is submitted to the Secretary."

Such a provision would provide for better program coordination since many Indian tribes operate educational programs for the same Indian students served by the local education agency. This would also facilitate the idea of partnerships—which Mr. Baird so eloquently discussed or talked about—and the involvement of Indian tribes as partners.

Any reference made to "other organized group" should be deleted from the Indian Education Act. While it is deleted from the definition of "Indian" in section 6601(4)(a), it is still referred to in sections 6106(b)(1)(a), 6106(b)(1)(b), 6106(b)(2), 6106(c)(2), and 6106(e). Any reference made to the child's parents or grandparents for purposes of program eligibility should also be deleted from the act. Section 6106 contains such reference.

It is NACIE's position that a prerequisite for being an Indian is to be a member of an Indian tribe and that only self-governing entities, namely Indian tribes and bands, Eskimo, Aleut, or other Native Alaska villages, bands, or tribes, can define their membership. Only members of these self-governing entities should be eligible for services under the Indian Education Act.

The definition proposed in H.R. 6 in section 6601 is much too broad. It erodes the powers of self-governing entities to determine their own membership by including in the definition of "Indian" a descendant in the first or second degree or an individual described in subparagraph (a). These individuals may or may not be considered members by the tribe in question and only the tribe should have the authority to make this determination.

We are also concerned about the Federal acceptance of unrestricted State recognition of Indian tribes for services under Federal programs such as the Indian Education Act. NACIE does not question the existence of legitimate State-recognized tribes or bands, many of which have an historical relationship with States. Their members may retain some semblance of tribal identity and integrity, including language and culture. Unrestricted State recognition, however, creates unexplainable distortions to the definition of "Indian".

To exemplify this predicament, consider that in 1990 the Census counted 4,987 Indians in the State of Alabama between the ages of 5 and 18, while 11,385 Indian students were counted for purposes of the Indian Education Act subpart (1) program during the same year in the same State. These students generated $1.3 million for public schools in Alabama during that year. But to say that these funds were used to educate only American Indian and Alaska Native students is questionable. As you are aware, the Census Department's method for determining ethnicity is self-identification, which would seem to be the most liberal method used for defining who is an Indian.

State recognition of tribes can be accomplished in several ways, such as by Executive order, incorporation, and the passage of State laws. We recommend that the Federal Government establish minimum standards such as the passage of a State law for the Federal acceptance of State-recognized tribes.

We are pleased and relieved that the Indian Fellowship Program is again included in H.R. 6. However, to our dismay the Department of Education has decided to select high-scoring Indian fellowship applicants from 1993 for awards in 1994. This decision was made by the Department without consultation with our Council. We object to this decision. In addition, we do not believe that the method being used by the Department of Education to select applicants for awards is consistent with the CFR, in particular, 34 CFR 263.12, which specifies the method by which fellowship applications are to be evaluated.

Since 34 CFR 263.8 requires that the applicant submit his or her most current transcript, and since the most current transcripts of last year's applicants may have changed, it would appear that the official academic record would also be changed. It is our view that any changes to the official academic record would require a reevaluation of all applications being considered for purposes of proper scoring and ranking.

The Department does not agree that a new competition of applications is necessary as does our Council. It also appears that the decision not to solicit new applications this year was in anticipation of new legislation being passed that eliminated the Indian Fellowship Program altogether. It also appears that this was for purposes of administrative convenience as opposed to considering the needs of Indian students. No new awards in 1994 would have phased out any continuing applications one year earlier.

While we support much of part B and part C of the Indian Education Act in H.R. 6, we do not support the elimination of the Indian Technical Assistance Centers. We view the elimination of the Indian Technical Assistance Centers as the possible beginning of a trend to eliminate all Indian-specific programs under the guise that service integration would result in better and more comprehensive services for all. Section 3806 of H.R. 6 creates categorical education centers while it eliminates technical assistance centers.

Part of the reason the Congress passed the Indian Education Act was to remedy the consequences of past Federal policies toward Indian nations. Until these consequences are remedied, the need for Indian-specific programs, including Indian Technical Assistance Centers, should remain in order to provide assurances that Indians are receiving equitable Federal education services.

When the Department of Education was created, the position of Commissioner of Education was eliminated and in the minds of many elevated to the level of Secretary of Education. Since that time, NACIE has been recommending that the director of the Office of Indian Education report directly to the Secretary of Education since the Deputy Commissioner of Indian Education had previously reported to the Commissioner of Education. NACIE again recommends that the position of Office of Indian Education Director be elevated to a level commensurate with that of Assistant Secretary, or at least to a level equal in stature, as is the position of Director of the Office of Bilingual Education and Minority Language Affairs, who reports directly to the Secretary of Education.

Currently, the Director of Indian Education is a career appointee in the Senior Executive Service. Recruitment and selection for the Office of Indian Education Director must be in accordance with the CFR governing the selection of members in the career SES.

During recent searches, Personnel Management Services within the Department of Education have extended an invitation to the chairman of the National Advisory Council to serve on the three-person Executive Resources Board. The other two members of the Executive Resources Board are already members of the career SES. NACIE's primary involvement in the process has been to identify three nominees from the list of candidates referred to it by the Executive Resources Board and submit a rank ordered list for the position to the Secretary of Education.

The Office of Indian Education Director is not in the normal sense a political appointee. Due to NACIE's unique involvement in this search process, the Office of Indian Education Director is not appointed in the same manner as would be other members of the career SES. This creates a dilemma of sorts.

To summarize, the Director is recruited by the Department of Education, nominated by the National Advisory Council on Indian Education, appointed by the Secretary of Education, and reports to the Assistant Secretary for Elementary and Secondary Education. Through all of this, the Office of Indian Education Director is a member of the career SES. This process has been confusing. It is almost always delayed and does not make sense.

In the event that the Secretary is unsatisfied with the nominees submitted by the National Advisory Council on Indian Education, he does not have to appoint any of those nominees. In the event that the National Advisory Council on Indian Education is not satisfied with the slate of candidates referred to it by the Executive Resources Board, the National Advisory Council on Indian Education does not have to submit that list to the Secretary of Education.

It would be better if it all were political in nature, in which case the National Advisory Council on Indian Education would be responsible for recruitment and nomination with the Director being appointed by and reporting to the Secretary of Education. If it is not a political position, then it should be exclusively a non-political and a career SES position only. This means that the National Advisory Council should not be involved in the process at all.

A review of the tenure of past Office of Indian Education Directors clearly shows that when the position was political—and at one time the position was purely political and not a career SES position—at that time, the Director was known as the Deputy Commissioner of the Office of Indian Education in the old Office of Education—it was held for a longer period of time by politically appointed directors than it was held by acting directors. Since it has been converted to a career SES position, acting directors have held the position almost twice as long as have permanent directors.

The responsibilities of the OIE Director are at least equal to those of the Director of the Office of Bilingual Education. In addition to being responsible for administering the Indian Education Act and developing policies within the Office of Elementary and Secondary Education, the Office of Indian Education Director has intradepartmental responsibilities as indicated by section 6501(b)(2)(c) and (d) respectively as follows: Coordinate the development of policy and practice for all programs in the Department of Education relating to Indian persons; assist the Assistant Secretary of the Office of Educational Research and Improvement in identifying research priorities related to the education of Indian persons.

An alternative to elevating the position of the Office of Indian Education Director would be to reassign these intradepartmental responsibilities to the Assistant Secretary for Elementary and Secondary Education. This would allow for responsibility to be commensurate with authority.

The National Advisory Council was created by the Congress of the United States under the Indian Education Act on June 23, 1972. The Indian Education Act has been reauthorized five times with the last such in 1988 under Public Law 100-297. The act is currently undergoing its sixth reauthorization. Section 6502 of H.R. 6 will drastically reduce the duties of NACIE.

The following comparison submitted for the record compares the current seven mandated functions and the proposal of H.R. 6. Those are submitted for the record.

The language in H.R. 6 would reduce the number of NACIE duties from seven to three. The remaining duties include providing advice to the Secretary, making recommendations to the Secretary for filling the position of Director of the Office of Indian Education, and submitting an annual report to the Congress. We agree with and support the elimination of the duty to review discretionary applications for assistance under the Indian Education Act. NACIE should instead, however, review Federal contract specifications and make recommendations to the appropriate Secretary with respect to their content when such contracts have a direct impact on the education of Indians.

The provision requiring the Secretary of Education to select the Office of Indian Education Director from a list of NACIE nominees would be eliminated as well. Whether or not it should be reinstated would be contingent on whether or not the position of the Office of Indian Education Director is a political or a career position.

We do not agree with the elimination of the other duties targeted for elimination in H.R. 6. In fact, we recommend that NACIE's responsibilities be expanded to provide advice to the Secretary of Interior as well as to the Secretary of Education. We also recommend that NACIE serve as a data collection center on all Federal Indian Education programs.

At this time, I would like to make some comments on other provisions of H.R. 6.

For purposes of better coordination of programs, it is recommended that the local education agency be considered an eligible school attendance area for Indian students under Section 113 of H.R. 6, otherwise known as the title I program. As you know, many Indian students who otherwise would be eligible for being served under title I do not necessarily attend a single school within a district. As a result, they do not create enough numbers in order to qualify for that school to be eligible to be considered a school attendance area. That is why we would like the local education agency to be considered a school attendance area for Indian students under the Title I program.

We recommend that the tribal complaint procedure, which is based on the special relationship between Indian nations and the United States be reinserted into the law under the Impact Aid program. This should be reinserted as a subsection of section 8005. The complaint procedure would be written in accordance with the information submitted for the record. As you know, this particular procedure is removed from H.R. 6 even though previously it had been in the Impact Aid language under Public Law 95-561.

Section 12105 creates a national commission on rural education, which is to be composed of 12 members. The purpose of the commission is to conduct a full and complete study on the state of rural education in America. Since the majority of educational programs providing service to Indians are located in rural parts of America, there should be some consideration provided to the appointment of Indians to the commission and a requirement that Indian education be a focus of the study. In addition, a provision should be included in this section that requires that school facilities be studied.

In closing, I thank you for your continued attention to the educational needs of American Indians and Alaska Natives.

I would be happy to answer any questions the committee may have.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Chiago appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. Chiago.

Now may I call on Ms. Taylor.

STATEMENT OF CARMEN CORNELIUS TAYLOR, EXECUTIVE DIRECTOR, NATIONAL INDIAN SCHOOL BOARD ASSOCIATION, POULSON, MT

Ms. TAYLOR. Thank you, Mr. Chairman.

Good morning. I am very glad to be here this morning to have this opportunity to make comments on these provisions which pertain to Indian education.

The National Indian School Board Association has over 90 schools in the BIA-funded system that are members. These include tribal contract and grant as well as BIA-operated schools.

I would like to open this morning with a comment. Last week I had an opportunity to be invited to meet with about 18 college presidents and their deans of education who are making a sincere effort to make some major changes in the way they are addressing teacher training. In preparing for that, I had to go back and review a lot of the history and chronology of Indian education. And in so doing, I was reminded about many of our successes in getting the

Indian Self-Determination and Education Assistance Act and becoming part of the ESEA reauthorization beginning in 1978 and the changes that have come about since then.

But it also made me very sad to realize in many instances how little changes have taken place. Most of that has to do with the bureaucracy and the unwillingness to let go of the control. No matter what we seem to do—from Indian self-determination to the tribal grant school system—there is still an unwillingness to let go. There still is a meddling in Indian self-determination and local control by local school boards.

As I sat down to try to attempt to make some comments on these provisions, it occurred to me that we just continued to tinker with these provisions every time they are up for reauthorization. I guess what I mean by that is that we make the little changes to try to force the hand of BIA to do something that they were already mandated to do in a previous legislation.

So before I even comment on some of these provisions, I guess I would like to just say up front—and I know Roger Bordeaux will address this more in his testimony—but a few years ago the Association of Community Tribal Schools came up with a concept called the Tribal Elementary and Secondary Education Institute. The idea is to separate out Indian education into some type of a separate entity. I believe that that concept and the support for exploring that concept is growing.

We had our annual conference in Atlanta 2 weeks ago and we had over 600 people there. When the question was posed about whether they would want education to remain under the BIA, whether they would want it to go under a separate entity with an advisory committee, whether it should be transferred to the Department of Education, or whether it should be assumed by the States, slightly over 42 percent of the participants agreed that they would like to explore having a separate entity with an advisory committee, and the other numbers went down from there. So when Dr. Bordeaux brings that up, I would like to say that we would support further exploration of that concept so that we quite tinkering every few years with these provisions.

Now I am going to make some comments on the provisions that are there.

I feel like there is too much emphasis on the standards for the basic education of Indian children. Currently—and this is as a result of the studies or reports that are done by OIEP through the monitoring and evaluation as well as the standards compliance reports submitted by the schools—80 percent of the BIA-funded are accredited by their States; 60 percent of them are accredited by a regional accreditation agency; and 45 percent are accredited by both. Only 7 percent of the BIA-funded schools are currently following the BIA standards.

So I guess I don't understand the emphasis on trying to revise these standards when it will probably take them another 5 years to go through the system. Nor do I understand the reason for costing out these standards when so few schools are following them. I think if we are going to conduct any cross-studies, they need to consider the accreditation standards that schools are following. That is certainly not, for the most part, the BIA standards.

I would also like to mention for the record that I listened to Dr. Tippeconnic's statement this morning. I know he is giving that testimony on behalf of the Department of the Interior, but I would have to disagree with the majority of what he submitted this morning. Especially, we do not support the recommendation to distribute dollars based on prior year count. I think that has certainly been answered loud and clear by Indian country and the schools that that is something they do not want.

We heard him talk about the DOD pay scale. I listened to your comment about it as well. That is an example of something that we worked very hard for. Our schools were falling way below in the pay scale level in the States they were located, so the DOD pay scale was something that was workable for our schools. In 1988, that was passed. We felt it was a victory.

But unfortunately, there has never been enough money to distribute to the schools so that they could really implement it with the full intent. So in fact we do have some schools that are interested in looking at some alternatives—maybe being able to set their own salary scales. It is primarily because of the adverse impact this salary scale has had on their school budgets.

If there were adequate dollars, I think there would not be any question that the pay scale is working. But they are concerned about the impact it is having on their budget. Dr. Tippeconnic did mention that sometimes it is 90 percent. I have had schools say 97 and 98 percent and that it is not leaving any dollars for anything else.

I guess we would like to possibly have at least school board authority to determine the amount of increases each year, that possibly we leave the pay scale basically as it is, but rather than doing across-the-board increases that we have some options for school board authority in granting the amount of increases from year to year for teachers.

The issue of administrative support services keeps coming up. For years, actually since Public Law 95-561 passed in 1978, we have been working for having administrative support services become a part of OIEP. We still have many, many problems with obtaining the adequate amount of administrative support services to our schools and to our area and agency education staff. We would really like to see that, particularly wholesaling facilities over to OIEP.

We support the increase in the amount of the non-competitive procurement, but we would like to recommend increasing it even more from the $25,000 to $50,000, and we would like to see it applicable to all sources of funds at the school as well as at the education line office level.

We also support the provision to have an outside entity submit a BIA education budget.

In closing, I would again like to say thank you for the opportunity. I also support Mr. Baird's recommendation for an education listening conference as well as a National Native Summit to try to put into action all of the many things that we have started in the past few years.

Thank you.

[Prepared statement of Ms. Taylor appears in appendix.]

The **Chairman**. Thank you, Ms. Taylor.

Ms. Taylor, if I may start with you, you commented on payments to school based upon prior year school population count.

Can all three of you submit a paper telling us why you think that is wrong? I may have to explain that to committee members.

Second, on pay flexibility, Ms. Taylor, you have agreed with Dr. Tippeconnic. Is that the consensus of Indian country?

Mr. Chiago, do you agree with that?

Mr. **Chiago**. Concerning the salary?

The **Chairman**. Yes.

Mr. **Chiago**. We have found that some of the different States have different amounts they pay their teachers. Some States pay a lot less than others, whereas if a BIA school is located within a State that does not pay that much, then you seem to get teachers who maybe are just coming for the salary and nothing else. The high rates don't necessarily guarantee good teachers in some cases.

The **Chairman**. But do lower rates guarantee better teachers?

Mr. **Chiago**. I think the whole teacher training program needs to be changed to get good teachers.

The **Chairman**. Mr. Baird.

Mr. **Baird**. I would concur with that. Nationally, the issue of professional teachers and the contributions they make and what they are getting out of it—it isn't an easy thing to look at. There is so much diversity in Indian country. At some point we need to look at the many different systems and how that would shape up.

The **Chairman**. In other words, instead of using the word "flexibility" which usually means up or down. What we are all talking about is not up and down, it is all down. Therefore, you want the opportunity to go below DOD, not to go above DOD?

Ms. **Taylor**. Schools are just concerned that they have no room for moving their money around. It is set because of the DOD pay scale. I think what Mr. Chiago said about the variation in the State—in some States our pay scales are very comparable to surrounding school districts. In some places, they are much higher.

Just as an example, there are many tribal contract and grant schools who, when they are setting their pay scales, survey their surrounding areas and come up with something that is very comparable so that they are not paying any more or any less, necessarily, than what is around them. I don't think we have any quibble with the DOD overseas pay scale if there was adequate funding, but their concern is that there has not ever been an adequate funding level for that pay scale.

The **Chairman**. If we do adopt that policy, I wish you the best. If I know budgets, next year's budget will be less than this year's, and the following year will be less than that also. You will be very flexible bringing it down.

On the matter of recognition, Mr. Chiago, you mentioned that benefits should accrue only to those who are enrolled members of recognized tribes. Is that correct?

Mr. **Chiago**. Of State and Federally recognized tribes.

The **Chairman**. Then you said that States should be restricted in their recognition process. Do we have any examples of States that are recognizing tribes in an irresponsible manner?

Mr. CHIAGO. Our previous chairman and current member of our council mentions that in his State—which happens to be Alabama—the member of the council is Eddie Tullis, who is chairman of his tribe, the Poarch Band of Creeks, and also the chairman of the United South and Eastern Tribes, which I believe is an organization composed of many of the tribes east of the Mississippi—he had mentioned that in his State he felt that there were some difficulties in terms of State recognition of tribes.

In my testimony, and also based on information we have received, the Census indicates that there were nearly 5,000 Indians ages 5 through 18 in the State of Alabama based on the self-identification process used by the Census. During the same year, there were almost 12,000 students counted for purposes of the formula grant program under subpart I of the Indian Education Act. So there were almost 7,000 more students who somehow were defined as Indians and possibly maybe as a result of some extremely loose definition made by the State.

The CHAIRMAN. At the present time, there are 100 different groups of people who have submitted applications to the Bureau of Indian Affairs, the Department of the Interior, for Federal recognition. In this process, one of the applicants has waited over 30 years, but I think the average is more than 10 years. The process is extremely slow, so oftentimes these tribes call upon the Congress for recognition.

So you have a whole flock of people out there who, as far as physical attributes are concerned, look obviously Indian. Yet because of the recognition process, they are not considered Indian. They have documents to support their claim, but they are still waiting.

On the other hand, because of broken treaties and unratified treaties, we have tribes that are Federally recognized, but they have enrolled members who have no land. In fact, one of the worst cases is that group of Shoshone Tribe members who live in Death Valley on their aboriginal lands, but they live there as squatters because that land is not theirs. Without land, they cannot have any clinics or schools, so this law does not help them at all. This committee has to concern itself with those Indians who are not represented by you.

So on the matter of recognition, I think we will have a few problems here because we would like to make it very simple and say just Federally recognized, but yet we know that there are many—because of broken treaties—who are roaming around with no recognition when they should be recognized.

The pay flexibility question raises an interesting situation. I am surprised that the Indians are willing to abide by the wishes of the Federal Government. I am just wondering why instead of complaining and saying that 90 percent of the payment has to be used for teacher's pay—why don't we insist on getting adequate funds to cover construction and cover administration costs and cover repairs?

Ms. TAYLOR. I think we've come before appropriations every year requesting increased dollars. In a joint oversight hearing held 2 years ago, I think it was something that we spent a lot of time trying to justify, that there had never been enough money to phase in those DOD pay provisions. So it is something that we have worked on.

I am not saying wholesale that people are wanting to do away with it necessarily, although you will note again that we polled participants at our conference and they are saying that they would like to be able to set their own salaries. They also have that option available to them now if they chose to convert to a contract or grant school.

I think probably a better avenue at this time would be to keep the DOD pay scale intact, but to allow some of the increase that is given each year—rather than just a wholesale 4 percent across-the-board or 5 percent across-the-board—be able to give some flexibility to school boards to determine the amount of increases they want to be able to give their teachers at the school site.

I am not recommending at this time doing away with the DOD pay scale wholesale. It continues to be a major concern because there are not adequate dollars.

The CHAIRMAN. I believe that all of you mentioned the six Indian Education Act technical assistance centers. Can you submit to us a memo describing where they are, what function they perform, and why it is important to you? It does not appear in H.R. 6 and I presume that you want it to appear in the bill. If you can provide us with some justification, I would appreciate that very much.

Mr. Chiago, your organization evaluates programs in the Department. Is that correct?

Mr. CHIAGO. That is one of our duties as assigned.

The CHAIRMAN. As part of that, have you evaluated the Office of Indian Education?

Mr. CHIAGO. We have evaluated it to the extent that we have resources to do so. We look at, for example, the position of Director, the length of time that has been vacant; we review applications; and we attempt to look at the program from that perspective.

In terms of an actual professional evaluation, we haven't done a professional evaluation. The method we try to use—since we are somewhat limited in our resources—is to provide information in our annual reports concerning the amount of money spent, the number of Indian students served, and that is pretty much the extent of our evaluation at this point.

The CHAIRMAN. I would like to submit a few technical questions to all three of you. I hope you can respond to them. This is a very important area and we would like to have the proper answers to our questions.

With that, I would like to thank you for spending your time with us and advising us on your thoughts.

The CHAIRMAN. For our last panel, representing the Association of Navajo Community Controlled School Boards, Ms. Lorena Bahe; the Executive Director of the Navajo Area School Board Association, Mr. Leonard Begaye; and President of the Association of Community and Tribal Schools and Superintendent of the Tiospa Zina School of Agency Village, South Dakota, Dr. Roger Bordeaux.

May I first recognize Ms. Bahe.

STATEMENT OF LORENA BAHE, ASSOCIATION OF NAVAJO COMMUNITY CONTROLLED SCHOOL BOARDS, WINDOW ROCK, AZ

Ms. **Bahe**. [Remarks given in Native tongue.]

Ms. **Bahe**. Good morning. My name is Lorena Zah Bahe. I am from Navajo with the Navajo Area contract and grant schools. I am also the president-elect of the National Indian Education Association. I would like to thank the committee for inviting us.

Before I get started here, I want to thank Bob, the staff, Ken, Kathleen, and the others for helping us and working with us. I really appreciate that. Thank you.

You have a copy of my statement and I would like to just highlight the major sections of title II that I would like to respond to.

Mainly, some issues I would like to present have to do with the critical funding problem we have been talking about here all morning with the BIA school system. I hear that Secretary Babbitt several weeks ago had said that the Federal BIA school system should be a model school system for the country. Unfortunately, I don't think that is going to happen. It is not going to happen because the tribal school boards and the Federal employees in all the schools do a tremendous job out there in operating their schools, but on a very tight, slim, shoestring budget. We don't have enough money out there.

The other thing is that we have had a big student increase over the past 5 years. In the BIA school system we had a 13.5 percent increase in student enrollment. A larger student population demands funding increases to maintain the current level of services out there in Indian country. So unless the Federal Government sees fit to properly fund all the BIA-funded schools, then we may be a model school system for the country.

So money is the bottom line. We need more money out there for Indian children. We need to probably be looking at other alternatives.

I would like to bring out the fact that ANCCSB last year had worked on a proposal to advocate on behalf of the Indian schools more money maybe through the status of an entitlement program. Because of our budget problems, we were very unsuccessful in getting enough political support for converting the BIA school system from a discretionary program to an entitlement program. Frankly, we believe that education of our Indian children is not a discretionary activity. However, that is the way the Federal Government views it.

The House included two provisions in H.R. 6, looking into better identifying the level of funding for BIA-funded schools. The first one directs BIA to examine whether the current weighted student unit funding method should be changed to a school-based budget system. This kind of a system looks at student population that would be served by the school. It looks at the characteristics of the programs within a school. It looks at program standards that can be achieved, and then determine the cost of the funding for these schools.

We support that. We feel that that study needs to be done. The other study that is also in H.R. 6 that we support is directing a budget study to allow the National Center for Education Statistics to do a 3-year budget for BIA. I think here we are not undermining the Secretary. I think Dr. Tippeconnic said that this would be undermining the Secretary of Interior. The Secretary will still submit his or her budget, and along with that the National Center for Education Statistics will also examine that budget.

The objective here is to allow Congress to compare a budget that is prepared by another entity to the one prepared by BIA. I think for too long BIA—especially BIA budget people—have always underestimated the need for more money out there in Indian country. BIA has underestimated their request for need for Indian education.

We hope that by having the National Center for Education Statistics do the BIA budget that this will eventually lead to getting more money, getting adequately funded, to make the school system the model that we all want it to be. For that reason, we supported that. We did help in writing up the language on the National Center for Education Statistics.

The other provision I am concerned about here has to do with the BIA's proposed bill language in the Appropriations Act to empower them to take away funds that were appropriated from BIA school systems. When we first heard about this—I know it went out for consultation hearings—there was an outrage out there in Indian country, especially in Navajo country, to the consultation hearing where we drew the largest audience in Navajo. I think the majority unanimously opposed BIA having to use the prior year numbers to appropriate. Here in the BIA budget it says that the BIA should be given the authority to take away money from the schools.

I am very frustrated to hear that. We need your support. I would ask the committee to insert language in H.R. 6 to make it clear that all funds that Congress appropriates for schools are specifically available and should be given to the schools without any bureaucratic interference from other people. I think that is very important. We need to make sure that whatever money is appropriated is given out to the schools, period.

I would like to address Chapter I allocation.

The chapter I program was created in 1965. The law does provide a full 1 percent of funds for basic grants to the BIA school system. We are all aware that there has been a change. The Administration wants to cut this allocation to a 0.8 percent. We talked about it here. We would like to ask the committee to restore that funding to a full 1 percent. All Indian children in Indian country are Chapter I eligible. We shouldn't be messing around with reducing the funds there. We need those funds out for Chapter I kids. I am asking the committee to restore that and help us out in that restoration of the full 1 percent.

I would like to thank the Chair for giving us support on having BIA-funded schools eligible—like all LEAs—for any type of Department of Education funds. Here I am asking the committee again to continue to support us and help us give that same status to BIA-funded schools. In looking at Chapter I and all the other Department of Education programs, we all educate the same students. We are all working with Indian students. Chapter I concentration grants and Chapter I grants are there for Indian students. There is no difference between a public school having Indian students that are educated in the public school compared to the Indian students that are in BIA schools.

We are asking support for that to change the definition of LEA to include BIA-funded schools. The programs, such as Chapter I grants, are already provided there for BIA-funded schools. The amendment would make BIA schools eligible for Chapter I concentration grants. I think, Mr. Chairman, you discussed that here.

The program targets communities with high concentrations of poverty families. Indian reservations contain that. We have several poverty-stricken families and we should be eligible for that main reason.

H.R. 6 does not propose to have BIA-funded schools eligible for Chapter I concentration grants. Mr. Payzant is wrong on that. I want him to prove otherwise, if I am wrong, and tell me how BIA-funded schools would be eligible for those concentration grants.

If the definition for LEA is changed, this will make BIA-funded schools eligible for those type of grants for the first time. I am really excited about this. We did work in submitting the language on making this eligible for Chapter I. It is here and it did get in. I ask the committee to continue to support that for me.

On the Bilingual Education Act, the only thing I am going to say is that I would like to see more flexibility in the number of years the students may participate in a bilingual education program. I think now we are limited to having a student only participate for 3 years. In special cases, they can participate for as many as 5 years. There, it should be up to the local schools and the local school boards to decide the number of years that a school will participate in a bilingual program.

I am looking at one of the best Navajo schools we have in Arizona. Rock Point Community School has an excellent bilingual education program. They are teaching their students both in Navajo and in English simultaneously from Kindergarten to 12th grade. When we graduate our students from Rock Point, they are in colleges. Several of them graduated from Stanford and some of the larger universities in this country. It does work. Teaching Native language and cultural components along with English is working in Rock Point. I see that as a model school. They get title VII funds, but it is only discretionary and it is a competitive grants program.

Proficiency is very important. For that reason, I am very concerned about the eligibility requirement and the flexibility to decide how many years or how long a student should participate in the bilingual education program.

In addition to my testimony, I would like to respond to some of John Tippeconnic's statements, especially on the Prompt Payment Act.

The Prompt Payment Act coverage is needed. It was put in there and we worked on it. We all supported it because BIA for a long time has been chronically late in making payments to the schools. For that reason, we legislated it. The current law says that the payments will be made on a certain date to these schools. I think we need some type of an enforcement mechanism for this. The schools would hope that BIA never has to pay even $1 in interest for late payments. We would rather be paid on time, like it was directed by Congress.

Regarding the payment dates, the current appropriation law to implement forward funding already requires that first payments be made to grants no later than July 1—not July 30, but July 1—and that the second payment be made no later than December 1. That is in the law and we need to enforce that.

The other statement I would like to make is with regard to the DOD pay scale for teachers. We think that the better solution and the better legal solution to this whole issue is that we be properly funded to implement the DOD pay scale. The bottom line is money. We need more money to implement that. We need more money to pay to our teachers.

Here again, John Tippeconnic is seeking flexibility. They want to be more flexible by giving BIA-funded schools the choice for whether to use that scale or not use that scale. I think eventually what this is really going to do is that it is only inviting all BIA-funded schools to reduce the budget more. Mr. Chairman, I think you are very concerned about that. We support the comments you have made to the DOD salary scale. We shouldn't support that we go below that because we are only decreasing our own budget. That is the situation that I am really more concerned about.

In closing, attached to my testimony I have additional amendments. There are some technical corrections that we made to H.R. 6 and then there are some new amendments that we are proposing. That is attached to my testimony.

I would like to thank you, Mr. Chairman, as well as the committee. We are doing a lot out there. We know that with the new legislation and Goals 2000 and the reauthorization, we are all looking at national Indian education reform. We have a lot of work to do over there. We have a lot of work to do out there. I have been here several times testifying to the committee on different issues, facilities, administrative costs, and ISEP.

We go on and on, it seems like. Every time I come, a lot of these problems and issues are still there. They are still the same. I don't know for how long it is going to go on, but we are very optimistic out there with our prayers. We hope that a change comes about and that we get more money in the future.

In all our prayers from our own culture and in our own way, we do speak of the Washendom, the national leaders up here, hoping they would see our problems and hear our prayers so that we get more money for our children. Our Indian children really do need help financially.

You can come up here as an advocate to testify and to speak on their behalf, but you do that so many times and yet it is still not happening. I think that is where Mr. Baird previously talked about the partnership. We do need everybody's help. We do need that partnership to move on to greater—I hope—and better things for the Indian people.

[Remarks given in Native tongue.]

Ms. BAHE. Thank you.

[Prepared statement of Ms. Bahe appears in appendix.]

The CHAIRMAN. Thank you very much, Ms. Bahe.

You spoke of late payments and you oppose the Department's request that the July 1 payment be delayed until July 30. Their justification is that they receive their money on July 1st, so payments on July 1st may not be possible.

I presume you have had experiences in late payments. How late have they have been?

Ms. **Bahe**. July 1 to July 30.

The **Chairman**. You said that they make late payments. How late have the payments been? 1 month? 2 months? 3 months?

Ms. **Bahe**. I remember that several years back one of the schools was talking about filing a lawsuit on that because they did not receive their first check until 2 to 3 months later.

The **Chairman**. What was your experience last year?

Ms. **Bahe**. It is still about 2 or 3 weeks late, especially for grant schools. I run a school, so I kind of know the situation.

Last year, the initial payment on July 1st was within that first week. I even think that the comment about not being able to do it on July 1st is in error because the appropriation is done October 1, which is 9 months before. There is no excuse for it. I think we even got the fund distribution document before July 1st, but it was authorized on July 1.

But there are payments periodically throughout the year. We even got one payment that was authorized last October and we didn't get the payment until last week. So it is still 5 or 6 months. Sometimes they are small amounts, but it still equates out to a significant amount when you add it all together.

The **Chairman**. Dr. Tippeconnic, I am very grateful that you have remained here. Can you come up here?

Is it impossible for the Department to make payments on July 1? Funds are available before then.

Mr. **Tippeconnic**. We make every effort in OIEP to provide the funding and make payments according to schedule. We don't always do it, as has been indicated, but we make every effort to do that.

The **Chairman**. Why do we not just leave it there, then, so that you can make an extra effort to see that payments are made on time?

Mr. **Tippeconnic**. With the forward funding mechanism, we should be able to do that.

The **Chairman**. Ms. Bahe spoke of a change you have requested in the Appropriations Bill that the Bureau be empowered to take funds away from BIA schools. Is that correct?

Mr. **Tippeconnic**. No; we don't take appropriated funds away from BIA schools. If I remember right, that was mentioned in the context of the prior year student count. Is that right?

The **Chairman**. I do not know. Ms. Bahe testified that you are requesting language for inclusion in the bill that would empower you to take away funds appropriated for the BIA school system.

Ms. **Bahe**. Mr. Chairman, that is in appropriation language. BIA had asked for that language to put a cap on the amount of funds. The bill says that an amount not to exceed $331 million shall be available for schools, but then on page 331 of the BIA budget, they are requesting that this language would provide BIA with the flexibility to reprogram funds from school operations to other programs if actual student enrollments are less than projected. This is coming out of page 331.

Mr. **Tippeconnic**. That is correct. That is part of the fiscal year 1995 budget justification. There is language in there that says exactly that, that if our projections are not correct in our budget justification, then funds can be reprogrammed to other areas.

The **Chairman**. This is on the prior year student count?

Mr. **Tippeconnic**. Not necessarily, no. It is on the projections we make within the budget.

The **Chairman**. How do you treat drop-outs? Do you do anything to bring them back, or do you just cross them off?

Mr. **Tippeconnic**. I don't feel we cross them off. I think drop-outs are treated in many different ways, according to the schools that they drop out of or attend.

The **Chairman**. But on the payments, you reduce the funds because they dropped out. Isn't that correct?

Mr. **Tippeconnic**. If we are going to do our funding on a prior year count, if there are two counts, and if we average those two counts, theoretically, that is true. Funding could go down for a school compared to——

The **Chairman**. It always does go down.

Mr. **Tippeconnic**. But we also have situations where schools increase in the number of students over the course of a year. In those situations, their funding would increase.

The **Chairman**. On the DOD pay level—I am chairman of the Defense Appropriations Subcommittee, so I have been advised that they plan to increase their pay scale by 5 percent, but in your budget you proposed 2 percent. How do you hope to make up the 3 percent?

Mr. **Tippeconnic**. I don't see any way right now that we can make up that 3 percent. It will have to be absorbed, I guess.

The **Chairman**. But the policy and regulations enunciated by the Congress say that it must be in line with DOD pay scale, so you are going to deliberately violate the congressional policy?

Mr. **Tippeconnic**. I guess you could say that, if our request does not compare to the actual DOD increase. My understanding of this is that we did contact DOD in the early preparation of the budget. The information we got from DOD was a 2 percent increase. That is what we put into our budget. That is my understanding. I didn't actually do the contacting. That was our Budget Office that did that.

The **Chairman**. I think you should check on that because the information I got as chairman of the committee was that it is 5 percent.

Mr. **Tippeconnic**. We will check on that.

The **Chairman**. Mr. Begaye.

STATEMENT OF LEONARD BEGAYE, EXECUTIVE DIRECTOR, NAVAJO AREA SCHOOL BOARD ASSOCIATION, WINDOW ROCK, AZ

Mr. **Begaye**. Honorable Senator Inouye, Kathleen, Bob, and Ken, I thank you for inviting me here this morning to speak on behalf of the Navajo Area School Board Association.

First of all, let me express my sincere appreciation to the honorable members of the Senate Committee on Indian Affairs for their support in the education of Indian children. This comes from the parents and the students and school board members from NASBA.

If I may, I would like to introduce a couple of our students from Wingate and Winslow and also the principal from Winslow Dormitory.

[Remarks given in Native tongue.]

The **Chairman**. Ya'ah te' 'eh.

Mr. **Begaye**. My name is Leonard N. Begaye. I represent the Navajo Area School Board Association, which is a coincidence since I was educated through the BIA system. I have come back to the NASBA program hopefully to improve the schools on Navajo.

Our school board association has 51 schools and dormitories throughout the Navajo Nation. These schools are governed by 258 school board members and we represent at least 15,000 Navajo children. Student enrollment at BIA schools continues to rise as parents become concerned about the violence and racism that exists in the public school systems on the reservation or within the border town areas. Since the Navajo Nation is a young nation, we can continue to expect an increase in student enrollment.

The Navajo Area School Board Association is concerned. It is for and about the education of Navajo and Indian children. We believe that we have a unique insight and understanding of the needs of educating Indian children within the BIA system. We also have a keen appreciation for the resources of which Indian parents and community leaders can be in the effort to improve the education of children.

We firmly believe that the education of Navajo children is a trust responsibility of the United States Government, pursuant to the Treaty of 1868 between the United States of America and the Navajo Nation. Therefore, it is the responsibility of the Government to provide the necessary resources to provide the best possible education for Navajo children. Without education, we realize that we cannot have true self-determination; we cannot have economic development; and we cannot have other services that can be provided by the Navajo people themselves to practice true self-determination.

The NASBA does not agree with the majority of the presentation that has been made by the Director of the Office of Indian Education Programs. We also still hold firm to our belief that Public Law 95-561 should be fully implemented. We believe that if Public Law 95-561 is fully implemented, then we would have adequate funds to educate our children. Then we hope at that time that we won't need to come before you to talk about our needs, but we can tell you about our abilities of what we can do for the education of Navajo children.

On the recommendations on H.R. 6, under standards, NASBA fully supports the use of standards, but to use the State standards as well as the BIA and tribal standards would result in 26 different sets of standards being in use. This is inappropriate and expensive. Instead, the Bureau should merely modify its existing standards to meet the requirements of Goals 2000 Educate America Act rather than attempting to meet all State requirements as well. Tribes should not be bound by State or Bureau standards unless they choose to do so.

We also believe that the Secretary should become involved in assisting school boards in developing their own standards. We do not feel that the Secretary should become involved in assisting school boards in developing their own standards as this would become expensive and time-consuming. The Secretary should provide assistance to the tribes in developing these standards and that the local school board should be able to receive assistance from the tribes.

Again, however, this will be expensive and therefore we are requesting additional funding to provide these services.

The CHAIRMAN. Mr. Begaye, if I may ask for a pause at this point, I have just been advised that there is a vote pending and I must return to the Senate floor to vote.

We will have a 15-minute recess.

[Recess.]

The CHAIRMAN. Mr. Begaye.

Mr. BEGAYE. Thank you, Mr. Chairman.

Again, to continue with my testimony on the studies, I believe that within this bill there will be too many studies that will be required. A lot of them seem to duplicate each other. I think we should seriously think about looking at all these studies and maybe combine them into one.

We also believe that the National Task Force's study on ISEP funding be continued. Also, we believe that the recommended base of $3,499 per weighted student unit should be adequate for the education of Navajo children.

This study should show the Congress that there is an urgent need to increase the funding for ISEP to be in compliance with Public Law 95-561 so that the cost of providing academic services which are at least equivalent to those provided by the public schools in the State in which the school is located may be met. We oppose the Office of Indian Education Programs' recommendation of using the prior year student count for funding for the current school year.

We also fully support section 1127(j) of the allotment formula to provide the needed funds for tuition of out-of-State students boarding at the Richfield dormitory in Richfield, Utah who attend Seever High School in Richfield, Utah. They may be paid from the ISEP funding at a rate not to exceed the amount per weighted student unit for that year of instruction.

While the Bureau or the OIEP has maintained that there are no provisions within any regulation, history shows that this was a common practice of the Bureau in the 1950's and 1960's in paying tuition for students staying in the border town dormitories and attending local public schools; for example, Holbrook, Winslow, Flagstaff, Snowflake, and Gallup dormitories.

Under the education functions, we believe that when Congress mandated or made a recommendation that a transfer of administrative services should be made—especially when the Indian tribes have recommended the transfer of administrative support services to education—the BIA should be required to implement these transfers both of personnel and funding. This should be reflected in organizational charts and budgets.

We have a major problem in the Navajo Area. The Navajo Nation Council has recommended transfer of administrative support services for the education functions to the Office of Indian Education Programs, but the area director has complied only partially. We want all facility management funds for the Navajo Area transferred immediately to the education offices on Navajo including housing funds, housing reimbursements, major improvement and repair funds, facilities improvement and repair funds, et cetera. We want all facilities management personnel transferred to education immediately, including those physically located at the area office.

Only about 5 percent of facilities, including housing, on Navajo are non-education facilities. But this allows the area director to control approximately 20 percent of funding. All area facility positions and all housing funds, including the reimbursements, should be transferred to the Office of Indian Education Programs for the operation of facility management programs. I think in schools that have realized the transfer of these activities to their local schools there is a great deal of improvement with the facilities at these schools.

Despite the recommendation of the Navajo Nation Council and various committees of the Navajo Nation Council, the area director has refused to transfer any administrative functions to education or to the education offices. The Congress should immediately act to ensure that the Bureau shall transfer the funds, functions, and personnel to education when such action is requested by the tribes concerned.

The current wording allows the area director to refuse to comply since it requires only coordination, regardless of tribal preference. Tribal preference should be determinant and transfer the administrative support services to meet the needs of the students and schools.

Since we are talking about the BOB side, we at the Navajo Area School Board Association are funded through the BOB side and therefore we are in danger of getting only a small portion of our funding each year. We are threatened to lose 80 percent of our funding this year because I had heard that the area director did not like the Navajo Area School Board Association advocacy for the transfer of administrative support services to education. That was his way of trying to get even. We threatened a lawsuit before we received approximately 80 percent of our funding for this year.

Under procurement, we appreciate raising the non-competitive procurement authority of school supervisors to $35,000, but we strongly recommend that this be raised instead to $50,000 and that all of this should be applicable to funds received by the schools.

Under personnel, we would like to see the area education programs administrator and the agency superintendent for education to be combined into one position. We also believe that the need for a national list of qualified and interviewed applicants for educational positions is no longer needed. Such a list has fallen into nonuse and Central Office routinely refers inquiries for education positions to the field. Deletion of this section would allow Central Office to devote its time to assuring that the field is operating its personnel system correctly rather than maintaining a list which is never used. The requirements for conditional appointments of applicants who have applied at both levels should be deleted.

Also, we wish to change the requirement that educators be notified of contract renewals at least 60 days before the end of school year to be changed to 30 days. This in turn means that the school supervisor must make the recommendation to the school boards at least 90 days before the end of the school year, or by February 1st in most cases. After only a little more than half a school year a supervisor cannot necessarily make a good recommendation for renewal of contracts. We would like the date for notification of contract renewals to be 30 days before the end of the school year, thus providing adequate notice to employees while allowing supervisors and school boards an extra month to review the performance ratings.

The section on teacher and counselor pay should be modified to delete those provisions which have already been completed, such as the 3-year phase-in of new pay scales.

We would also like to see a section prohibiting reemployment of an educator who voluntarily terminates employment to be modified to reflect that the section applies only when the school board does not approve the termination, and for the prohibition to apply not only for the year in which termination occurs but for one additional year. We have had cases where employees resigned late in the school year, after being told that their contracts were not being renewed, solely to avoid having to meet State certification requirements and immediately being hired at another school for the next school year before any action shows on their official record. The addition of a second year of non-eligibility would eliminate this practice.

We also believe that a school board should be allowed to notify the State departments of education to recommend that teaching certifications be revoked for teachers who break their contracts by abandoning their positions or leaving their positions, even when school boards refuse to release the employee from his or her contract.

We also recommend that the Bureau should eliminate the status quo system and put all educators on education contracts. This current system protects incompetent administrators and teachers, thereby denying Indian children a decent education.

We support the concepts embodied in section 6709 of the bill, which establishes a Division of Budget Analysis within the Office of Indian Education Programs.

In conclusion, NASBA recommends to the Congress of the United States to require that the Bureau meet the mandates of Public Law 95-561 fully and to implement the whole law so that the concept of local control by the school boards can be fully realized and that the funding for Navajo children could be adequate to meet the needs of the Navajo Nation.

The Navajo Area School Board Association appreciates the opportunity to testify before the Senate Committee on Indian Affairs and the support the honorable Senators of the committee have consistently given to the children of the Navajo Nation by providing assistance to assure funds are allocated for the education of these children.

Thank you.

[Prepared statement of Mr. Begaye appears in appendix.]

The **Chairman**. I thank you very much, Mr. Begaye.

Dr. Tippeconnic, you just heard Mr. Begaye recommend that the administrative support services for education purposes and facilities management and funding be transferred to the Office of Indian Education Programs. What do you say to that?

Mr. **Tippeconnic**. That is a provision in Public Law 95-561.

The Joint BIA Reorganization Task Force has addressed that issue. It has come up before the Task Force. The Task Force decided to take this on an area-by-area basis within the BIA. Navajo and Oklahoma are the two areas right now where that is being pursued. It is still in the process of being negotiated and being worked out. Ultimately, I feel it is going to come down to a decision of what the tribes want in those particular areas.

The **Chairman**. Mr. Begaye, in your prepared statement, you referred to status quo employees, and you recommend that provisions be eliminated.

What are status quo employees?

Mr. **Begaye**. Status quo employees are employees that were working for the BIA prior to the passage of Public Law 95- 561. This was in 1978. We have still many of these employees at our schools. The problem with their status quo system is that the school boards cannot touch them. They are known as the dinosaurs in the BIA. They refuse to do their jobs. They are just occupying the position and not really providing the services that are needed out there.

I believe the intent of Public Law 95-561, when it was first written, was to do away with the status quo system within 3 years after the passage, but here it is 15 years later and we still have status quo employees who are working for the BIA. We believe that they are hindering progress.

The **Chairman**. They are working for the BIA and you have no control over them?

Mr. **Begaye**. No.

The **Chairman**. What do you say, Dr. Tippeconnic? Should they have the authority to fire them?

Mr. **Tippeconnic**. School boards should have the authority to hire and fire who they want. There are still status quo employees. The transition to a full contract system has not been made.

I really don't know the details and all the personnel regulations that apply that would prohibit that from happening, but I would be glad to provide that to you.

The **Chairman**. How long should the transition period be? There are status quo employees who have been on for over 15 years.

Mr. **Tippeconnic**. It should take place as quickly as possible. Evidently, it hasn't. I am sure there are personnel reasons why it has taken so long. As I said, I am not knowledgeable of all the details of the personnel system, but we will be glad to provide that to you.

Mr. **Begaye**. I believe the problem that Public Law 95- 561 faces is that when the Congress approved the law, it gave the law back to the BIA and told the BIA to come up with plans on how to implement the law. So what they did was, instead of enforcing the regulations, they put in their own regulations that would cover some of them so that things like the status quo system were not fully implemented. They did not want to lose their seniority or their protection from the school boards.

I would like to give you an example of one. We have a principal on the reservation that was accused of abusing children. It has been documented that this person abused children by slamming them against the wall and by calling them derogatory names. He has done the same with his staff and with the people in the community. Yet when the school board tried to remove this person, it almost has to take an act of God to get him out of there. As of right now, he is still in the BIA system. I believe he works at the agency office at the present time. But he is still in the system.

There are a lot of incidents like this that have taken place on Navajo. It is so frustrating for school board members that we cannot seem to get rid of these type of people at our local schools.

The **Chairman**. Did you communicate your concern to the BIA?

Mr. **Begaye**. Yes.

The **Chairman**. And what did they say?

Mr. **Begaye**. They said that they would get back to us and see what they could do to him.

The **Chairman**. When was that?

Mr. **Begaye**. I have forgotten, but about 1 year or 1½ years.

The **Chairman**. Dr. Tippeconnic, how long does it take to get back to these people?

Mr. **Tippeconnic**. It depends. Probably too long from their perspective.

The **Chairman**. Do you recommend we go along with the recommendation that we do away with the status quo?

Mr. **Tippeconnic**. Yes, I do. I think we are moving toward the contract system and doing away with——

The **Chairman**. It has taken over a decade and a half now.

Mr. **Tippeconnic**. It has taken a while. As I said before, I am not sure of the real reasons why, but my understanding of any personnel system is that individuals that are employed in a system have certain employee rights. Those rights must be protected and respected from their point of view. Making a transition isn't always that easy to do. That is my sense in a general way.

The **Chairman**. Why don't we promote that principal to your office? [Laughter.]

Mr. **Begaye**. That is the practice of the Bureau. Somebody said that when you work for the BIA, you are no longer needed, or when you are dead in the office, then they transfer you to the Central Office. This is an old joke that goes around Navajo.

But one thing we would like as school board members is the right to hire and fire these incompetent people at our local schools. That is all we are asking for.

The **Chairman**. We will take a hard look at that. You have convinced me.

Dr. Bordeaux.

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STATEMENT OF ROGER BORDEAUX, PRESIDENT, ASSOCIATION OF COMMUNITY AND TRIBAL SCHOOLS, AND SUPERINTENDENT, TIOSPA ZINA SCHOOL, AGENCY VILLAGE, SD

Mr. **Bordeaux**. Mr. Chairman and members of the committee, I would like to thank you for giving us the opportunity to speak with you this afternoon.

Before I start my comments, I would like to say that the comments are going to be from a pessimistic optimist, if that is possible. I am extremely pessimistic that the Federal Executive Branch is not capable nor willing to take on Indian education in any meaningful sense and I am optimistic that tribal governments and tribal organizations are willing to do that, if allowed. That is where everything comes from.

First of all, I would like to formally tell you that I am going to give committee staff scratched up documents of H.R. 6 in regards to what we recommend to take out and to add. All of what we are primarily concerned with deals with local control, tribal government and Federal Government relations, self-determination, and the elimination of State and Federal governments in managing Indian education and allowing the tribes to do that.

So all that we have been discussing about hiring and firing staff—that is not exactly true. The law says that they can do it, but there is a kicker in there saying that the principal can request to the line officer that the decision of the school board be overturned. The line officer can then give it to the director and do the same thing. They can do that for finance, for budget, for personnel, for purchasing. So almost anything the Bureau school boards do generally is okay. But if there is a conflict between them and their school supervisor, there is a process in this law that allows them to go ahead so that the Bureau has the final say.

So from a local control standpoint, what I give you crosses all that out. It does that also in other sections that deal with that.

The **Chairman**. In practice, up until now, they have disregarded your recommendations?

Mr. **Bordeaux**. Almost always.

I think in the long run if we gave Dr. Tippeconnic a chance to take off his Department of Interior hat and to take off his Bureau of Indian Affairs hat and just give him his hat for the Director of Office of Indian Education Programs so that he doesn't have to talk for other people and can talk for himself, the majority of what is recommended by the Department and the Bureau is not necessarily what is being recommended by the Office of Indian Education Programs who by him as a person.

It contradicts a lot of what we know in regards to educating children. We are dealing with staff and everything else. Their recommendations must be taken with a grain of salt saying that it is not them talking, it is non-educators talking within the Bureau and within the Department and within OMB. The clearance process is just crazy and doesn't give anybody an opportunity to say what they think should really happen.

So a lot of what is in here—and what Carmen said earlier about the tribal elementary and secondary institutes—would eliminate all that. We have a plan that is attached to our testimony in which tribal governments deal directly with Congress in determining budgets and policies and procedures as opposed to any other Federal agency. I think in the true sense of history, that should be the correct way to deal with tribal governments. We could do it on a pilot basis just with education, but we could also do it with everything so that you eliminate all other departments within the Federal Government and have a separate agency directly to Congress and not a part of the Federal executive branch.

The CHAIRMAN. A lot of people disagree with you.

Mr. BORDEAUX. They certainly do, but that is okay. That is why I said I was an optimist. I think tribal governments will eventually get that.

The other main thing I wanted to talk about was that in the discussion we had over 2 years ago on oversight hearings on facilities, there was a large amount of discussion on the $500 million backlog in FI&R projects, a need for $500 million in new school construction, and all this other stuff. I remember at that hearing that Senators Daschle, Simon, Reid, and others, including Congressman Pastor, said, "Why don't you guys start working on something and give it to us so that we can make a difference?"

There is at least a need in Indian country of $1 billion and nobody is doing anything about it. The Bureau has their constraints, so they have zero budget for construction and all these other things. So they are not going to do anything in the short term or the long term. We need a different mechanism to help finance schools, specifically school construction and capital outlay funds.

We have worked with staff from Senator Daschle's office and staff from Senator Simon's office. Senator Simon's office does have a draft of some bonding legislation that would be the ideal for us. Again, the problem might be budget and appropriations, but at least it is sitting out there.

Attached to my testimony are some possible alternatives for the Bureau of Indian Affairs and the Office of Construction Management. Attachment C specifically says that through fiscal year 1993 there are at least $123 million in *x* account funds, which are funds that have been previously appropriated for education construction but are not specifically identified for allocation. So it is about $123 million through fiscal year 1993 that are sitting there in *x* accounts that nobody is actually using or specifically being spent anywhere.

Then also part of the attachments include a document from the BIA, dated April 1, which shows the total construction allotments and suballotments. It shows that there are $279 million in various construction projects that were appropriated and so far through almost 10 months of the fiscal year they have only allocated 12 percent of that total amount.

Depending on how you look at those two different dollar amounts, they probably have over $300 million right now that is sitting somewhere. At least one-third of that is not specifically identified for some place.

So part of our recommendation is to use that money as security in allowing tribes and tribal organizations to go out and issue bonds or work with the bank to do a purchase on a facility with the Federal Government signing off with security.

Then the last attachment includes what we have received in working with the Norwest Bank in the Central Area in regards to a process of how to take a look at and actually fund $300 million to $400 million worth of construction in working directly with the bank and bonding and making sure there is security and everything like that. The key to all this is some commitment from the Federal Government to either over time set aside separate funds or something to specifically say that they have a true commitment and a legal and moral obligation to make a difference in providing schools for all those students who are out there.

In taking a look at what was said this morning and this afternoon, I think if the Office of Indian Education Programs was allowed to testify on their behalf as opposed to being represented for Bureau and Department of Interior and the rest of the Federal Administration, I think they would be saying different things. What was discussed with regard to partnerships, I think that is an interim step to someplace where we should be, and that is where tribal governments have management and control over Indian education and not State governments or the Federal Government.

So in all this, when you look at the ESEA reauthorization, you look at Goals 2000—if you compare the State departments of education and tribal departments of education—everything that is being pushed on tribal governments is from a State and Federal standpoint and most people I think unconsciously say that it is okay to apply State standards to tribal schools.

The association basically says that it is the tribal governments' ultimate responsibility for providing education services to their children so they should be the ones that make the determination in terms of standards, finance, and everything else. So our attachment about the institutes is something that I think needs to happen, maybe not right now, but in somebody's time.

Thank you.

[Prepared statement of Mr. Bordeaux appears in appendix.]

The CHAIRMAN. Thank you very much.

Dr. Tippeconnic, what do you have to say about Dr. Bordeaux' statement on the $1 billion in construction that we have not proceeded with?

Mr. TIPPECONNIC. He is correct in terms of what the need is out there. We have a tremendous backlog in terms of renovation and repair of our existing schools and a tremendous need for new school construction. There is no question about that. The inability of our efforts to meet that need are directly related to budget. Budget decisions and budget limitations do not allow us at this point to meet that need.

I support what he says about looking at alternative ways to try to meet that need. It is obvious that the existing mechanism and process is not going to meet that need, even over a long period of time. I think there must be some alternatives. What he presented is very interesting and I think we ought to look at that seriously and look at other alternatives to try to make a dent in providing safe and adequate schools for our students.

The CHAIRMAN. I can sense the frustration of Dr. Bordeaux because with this backlog and with the zero funding, nothing is being done. So you must expect them to come up with alternatives.

What sort of process is involved internally in the Bureau? Are you called upon to make recommendations on such things as construction? Are you involved in that process?

Mr. TIPPECONNIC. OIEP has responsibility for facilities O&M. New school construction and the majority of the repair and renovation activity is conducted out of FMCC in Albuquerque and the Office of Construction Management in the Department. Our involvement in that is limited.

Do I have opportunity to make recommendations and suggestions? Yes, I do. I do try to meet on a weekly basis with the Director of OCM—and at times the Director of FMCC is a part of that—to articulate our concerns, and to make recommendations to improve the process. It is a difficult process at the present time.

The CHAIRMAN. Does the office at Albuquerque have educators?

Mr. TIPPECONNIC. Pardon me?

The CHAIRMAN. Are there educators on the staff at the Albuquerque Office?

Mr. TIPPECONNIC. Within FMCC, I don't believe so, although I don't know exactly for sure. The majority of the people are probably not educators.

The CHAIRMAN. So there is no one to speak up for education, then?

Mr. TIPPECONNIC. From an educational perspective, that is correct.

The CHAIRMAN. Maybe we need to change that. Do you agree?

Mr. TIPPECONNIC. I think we ought to look at it, yes.

The CHAIRMAN. No; we have been looking at things too often. That is all we have been doing. I suppose Dr. Bordeaux wants us to stop looking, stop studying, and start acting.

Mr. BORDEAUX. Mr. Chairman, just to discuss what he talked about, the Association of Community and Tribal Schools had their meeting a couple of years ago in Honolulu and that is where they came up with the tribal elementary and secondary institutes. By the end of that session, the association more or less told me that one of my personal goals should be the elimination of the Office of Construction Management and FMCC because they don't meet the needs of schools, even though 80 percent or more of the funds they manage are education-related. Those must be put directly under OIEP and nobody else. That is the only way it is every going to make a difference in the long-run.

The CHAIRMAN. They are trying to help you, Dr. Tippeconnic.

Mr. TIPPECONNIC. I appreciate that. [Laughter.]

The CHAIRMAN. Where is the report by the Office of Construction Management on school construction funding that was due on April 1? Was there a report due on April 1?

Mr. TIPPECONNIC. From OCM on construction management?

I believe—although I can't speak for OCM—that they got an extension to that. This is the survey on the needs that exist out there?

The CHAIRMAN. On school construction.

Mr. TIPPECONNIC. I think they got an extension and they are in the process of collecting the information.

The CHAIRMAN. Who gave them the extension?

Mr. **Tippeconnic**. I think they got it through whoever the report was coming to up here in Congress. If we are talking about the right report, that is. I can't speak for OCM.

The **Chairman**. It is usually supposed to come through my office, but I do not recall providing for an extension. You check it out.

Mr. **Tippeconnic**. It may have been the Appropriations Committee that provided that extension.

The **Chairman**. Ms. Bahe and gentlemen, I thank you very much for your patience in waiting this long. I appreciate your travelling long distances to be with us. We will do our best to study your prepared statements and make the appropriate changes where changes are necessary. We will do our best. Thank you.

[Whereupon, at 1 p.m., the committee was adjourned to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

Prepared Statement of Hon. Ben Nighthorse Campbell, U.S. Senator from Colorado

Thank you Mr. Chairman for conducting this most important hearing on the Indian provisions of the reauthorization of the Elementary and Secondary Education Act (ESEA). I am hopeful that as the Senate moves closer to completion of the Administration proposal, as embodied in S. 1513, it will include greater provisions that reflect the educational needs of Indian students.

Mr. Chairman, like many communities across this country, both urban and rural, black or white, many Indian communities are faced with a tremendous challenge to see that its young people are educated, or more specifically have at least the opportunity to obtain an education. In order to keep pace with the continuing demands that our society places on individuals to obtain a quality education, it is important that our Indian young people are able to be competitive with the rest of their peers.

In addition, we as Indian people also have a unique obligation to our communities and our culture. So often, what we learn and the way we learn is exclusive from our culture and traditions. Consequently, the problems that our young people are faced with can be indirectly related to the way they are taught.

As of the 1990 census 34.5% of all Indian and Alaska Native people over the age of 25 do not have a high school or a Graduate Equivalency Diploma. For the those that reside on reservation lands the figure is higher, at 46%. Further statistics indicate that Indian Students score approximately 28 points below the national average on SAT-verbal scores. For math, the number is higher, at 34 points below the national average.

Mr. Chairman, I am not an educator but I do know that our communities are in need of greater assistance. I am encouraged that H.R. 6 includes provisions that will allow the BIA and Indian students to develop and achieve the high standards that are embodied in the Goals 2000: Educate America Act. I am also encouraged with the provisions for increased training and research that will be mandated, and for the establishment of two centers for gifted and talented students at the Tribal Community Colleges.

While I am aware many of these programs are being reauthorized, I am hopeful that this will be the beginning of a greater commitment from the federal government to provide greater educational opportunity to this country's first Americans.

I look forward to hearing testimony from the witness who are here today. Thank you.

Prepared Statement of Dr. John Tippeconnic, Director, Office of Indian Education Programs, BIA, Department of the Interior

Good morning Mr. Chairman and Members of the Committee. I am pleased to be here today to present the views of the Department of the Interior on H.R. 6, "Improving America's Schools Act of 1994".

We strongly support the purpose of H.R. 6 to extend for five years the authorization of programs under the Elementary and Secondary Education Act of 1965. We also support S. 1513, the Administration's Elementary and Secondary Education reauthorization proposal. However, our comments will be directed to H.R. 6 as passed by the House because S. 1513 does not include the reauthorization of Bureau of Indian Affairs (BIA) education programs.

Although we support H.R. 6, we have some significant concerns relative to Title III, Part F of the bill and would like to address these concerns. We strongly recommend that they be addressed to enhance the benefits to be derived from these programs and increase the involvement and participation of tribes, Indian schools and the Indian children being served.

Standards for the Basic Education of Indian Children in Bureau of Indian Affairs Schools

We recognize the need and agree with the requirement to coordinate the development of our standards with those developed and implemented pursuant to the GOALS 2000 Educate America Act of 1994. We believe the BIA should only develop content, performance, and opportunity to learn standards as prescribed in GOALS 2000.

H.R. 6 would require that we publish our standards within 18 months enactment and coordinate them with State plans under GOALS 2000. State plans could take over two years to develop. We are concerned with the conflicting timeframes contained in the bill. It is unreasonable to require the BIA to submit a plan on July 1 1995, indicating how it intends to meet standards that are no required to be finalized until, if enacted today, November 1996. Instead, we should be given an option to Substitute an interim plan for achieving BIA standards until GOALS 2000 standards are available.

We believe that the annual reporting requirement may become burdensome. Instead, we propose reporting on a two—year cycle as to how we plan to implement all applicable standards.

We recommend requiring plans to bring schools up to the new, revised BIA minimum standards or to the schools' state standards which will be consistent with GOALS 2000 standards when they are available. Also, we recommend adopting a process which will result in a fewer number of basic education standards for BIA schools.

H.R. 6 proposes that a tribal governing body can submit to the Secretary a proposal for alternative standards and such revised standards shall be established and implemented by the Secretary. To build as much flexibility as possible for the tribes in developing and implementing standards, we recommend revising the language to indicate that the standards could also be established and implemented by the tribal governing body.

H.R. 6 also calls for the development of standards and procedures for the closing, consolidation, or substantial curtailment of schools. Specifically, the bill proposes that affected tribes shall be afforded an opportunity to comment whenever closure, transfer, consolidation, or substantial curtailment of a school is under active consideration or review. We support the opportunity for full and active tribal participation in such cases, but recommend that in cases where the Secretary may need to close a school for reasons of health, safety, or declining enrollments, the Secretary should have the authority to do so.

H.R. 6 proposes a process for the approval of an application for the awarding of a contract or a grant, for a school. To ensure that the funding of new schools does not adversely affect existing schools, we recommend linking the application process with our budget process.

National Criteria for Dormitory Situations

With respect to developing national criteria for dormitory situations, our concerns are similar to those we expressed with respect to the minimum academic standards regarding timing, reporting, study, and closures. Given that the BIA has already published criteria for dormitory situations, we recommend using the phrase "revision of existing criteria."

Facilities Construction

The section on facilities construction would require the Secretary to submit a plan to Congress by January 1, 1996, to bring schools up to health and safety standards and to publish, within six months of enactment, regulations to establish priorities for school construction. This section outlines procedures required to close schools that do not meet health and safety standards. We support the intent of this section of the bill. Many of our schools are in need of repair and renovation to bring them up to minimum safety and health standards.

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For BIA schools that are temporarily closed or consolidated, or programs of a BIA school that are to be curtailed due to plant conditions that constitute an immediate hazard to health and safety, we recommend including provisions requiring the development and implementation of a plan to ensure continuity in the services being received by the affected students.

Allotment Formula

The requirement for the Secretary to conduct a study to determine the feasibility of changing from a Weighted Student Unit (WSU) to a school-based budget system is very limiting. We believe it narrows the options for changing the formula to a predetermined outcome—a school-based budget. We recommend that the scope of the study be flexible enough to examine other possible options in addition to the school-based budget.

The Department opposes special funding for Richfield, Utah, as would be provided by H.R. 6. We should not set a precedent in this case by funding the basic operations of a public school. No other state has asked for, or requires such payments. This school district receives Johnson 0'Malley Act and Impact Aid funding as well as state funds.

Budget Preparation and Submission

We oppose this section of H.R. 6 because it would alter the budget preparation and submission process and, in doing so, undermine the authority of the Secretary of the Interior. It is inappropriate for legislation that transfers the Secretary of the Interior's authority to determine the adequacy of the Department of the Interior's budget as it relates to the study to be undertaken by the National Center for Educational Statistics.

In effect, the Secretary of the Interior's authority to determine funding-priorities would be curtailed. The Secretary of Education, who has no authority to administer Interior programs, would be recommending funding levels for the Department of the Interior without assessing competing priorities.

The bill specifically requires National Center for Education Statistics to conduct the study. The Secretary of the Interior should have the flexibility to choose the best qualified entity to conduct the study, although the Secretary may wish to conduct such a study in consultation with the Secretary of Education. In addition, it is unclear what the phrase "achieve academic and residential programs" means. This phrase needs to be clarified.

With regard to the proposed Division of Budget Analysis, further study is needed to determine whether creation of a separate office would be beneficial. Given the downsizing and FTE reductions taking place in the Department, the creation of such an office could only take place by reducing BIA personnel elsewhere. We oppose including such a provision in law.

Uniform Direct Funding and Support

With regard to uniform direct funding and support, the FY 1995 budget proposes language that would allow funding to be based on a prior year student count. We recommend that such language be included in the authorizing language. We continue to support the broad goal of this language: To provide schools information as to their funding level at the beginning of the school year. It is our intention to continue to work with tribes to determine an appropriate implementation method.

Payments

We oppose the method of payments as specified in this section of H.R. 6. The House-passed bill requires the BIA to make two payments to grantees, (the first on July 1 and the second by December 1). Funds would not become available for obligation until July 1. It would not be possible to make a payment to grantees on the same day the funds are obligated. We recommend that the language be modified so that the July payment is made no later then July 30 of each year.

The bill states that the provisions of the Prompt Payment Act shall apply to the payments required to be made under section 1146(a). The Prompt Payment Act applies to contracts for the acquisition of property or services and agreements. The provisions do not apply to grants. Prompt payment is based on the invoice date from the contractor billing for goods or services already rendered or for progress payments on a construction contract. Grant schools receive payment in advance of providing the service (i.e., operating the school for a semester); therefore, they should not be entitled to receive interest on payments for services that have not yet been provided.

More problematic, the Prompt Payment Act states that "Agencies shall pay any late payment interest penalties out of amounts made available to carry out the program for which the penalty is incurred." This means that School Operations funds are the source of interest payments; therefore, it would be necessary to retain a portion of the School Operations funds to pay interest penalties, rather than distributing all available funds to eligible schools. The Prompt Payment' Act does not authorize the appropriation of additional amounts to pay penalties.

We recommend adding a provision to the bill that would allow school boards to establish salary schedules other than the Department of Defense (DOD) schedule now required of BIA-operated schools. The DOD pay scale has served its purpose and we also believe all BIA-funded schools need the flexibility to determine their own salary schedules.

Finally Mr. Chairman, we strongly support many of the provisions of H.R.6 and the recently passed GOALS 2000 legislation. We firmly believe that provisions of H.R. 6 can be made more effective by including in the legislation a statement of purpose for requiring all children and youth to attend school. We believe that true education reform and school improvement requires communities and parents to take an active role in setting the goals for their schools and children. For Indian country, this discussion and debate must fully involve tribal governments as well as communities and parents. The history of school reform in America illustrates that past reforms have failed even though they have been worthwhile because communities and parents have not been meaningfully involved in the design of their local education programs.

This concludes my prepared statement. I would be happy to answer any questions the Committee may have.

Statement of Thomas W. Payzant
Assistant Secretary for Elementary and Secondary Education
U.S. Department of Education
Before the Senate Select Committee on Indian Affairs
May 4, 1994

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today on the Improving America's Schools Act of 1993, the Administration's proposal for reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). As the Committee requested, I will discuss the major provisions of our reauthorization proposal and of H.R. 6, the reauthorization bill passed by the House, as they would affect American Indian and Alaska Native students and schools.

Mr. Chairman, the Improving America's Schools Act of 1993, introduced in the Senate as S. 1513, is one of the most important pieces of legislation to come before this Congress. It is an embodiment of President Clinton's commitment to the children of America, and I believe it could not be considered at a more critical time. Let's look at some of the recent statistics on the economic and educational status of Indians.

- In 1990, according to Census data, 31 percent of American Indians lived below the poverty level, compared to 13 percent of the total population.
- The percentage of American Indian students who dropped out of school between grades 10 and 12 declined from 22 percent in 1982 to 17 percent in 1992. However, the drop-out rate for Indians remained higher than that for any other ethnic group.
- The 1990 Census also found that 65.5 percent of Indians ages 25 years and older had a high school diploma, a significant increase over the 1980 rate of 55.5 percent, yet still below the overall rate of 75 percent.

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The Administration believes that Federal elementary and secondary education programs must be dramatically restructured to address more comprehensively the severe needs illustrated by these data. The ESEA was first enacted in 1965 and has, since that time, contributed to many improvements in American education. For example, the Title I program has helped improve the basic skills of disadvantaged children, and Drug-Free Schools funds have supported the implementation of programs and policies to prevent drug abuse across the Nation. Yet the full potential of ESEA has not been realized. Program resources have not triggered the kinds of transforming, systemic changes that our schools, particularly those in poor communities, often need. Instead, program resources tend to address narrow, categorical issues and to operate apart from broader educational programs and reforms. It is time to do better.

The proposals in S. 1513 reflect five major themes: (1) enabling all children to achieve to high academic standards; (2) improving classroom teaching through the provision of intensive professional development and technical assistance; (3) providing educators with greater flexibility in exchange for accountability for results; (4) bringing together schools, parents, and the larger community in support of educational reform and improvement; and (5) targeting Federal resources on the schools and communities most in need of support, in amounts sufficient to make a difference. These themes are addressed in specific legislative proposals across all program areas covered by the bill, including the major programs serving Indian children. Both the 90 percent of Indian children who attend public schools and the remaining 10 percent in BIA schools, will benefit from these proposals.

Following is a description of how our proposals for some of these key programs including Indian Education, Title I, Impact Aid, and Bilingual Education, would affect the

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education of American Indian and Alaska Native children and adults. As the Committee requested, I will also discuss the major provisions of H.R. 6 for these programs.

INDIAN EDUCATION

The Administration has proposed to reauthorize the Department's Indian Education programs as Title VI of the ESEA. Our reauthorization proposal is designed to ensure that Indians benefit from national education reforms and receive every opportunity to achieve to challenging academic standards.

Formula Grants to Local Educational Agencies

Under current law, the Department awards formula grants to local educational agencies (LEAs), Bureau of Indian Affairs (BIA) contract schools, and BIA-operated schools. Recipients use these funds to supplement the regular educational program for Indian children.

S. 1513, the Administration's proposal, would promote accountability for results and the integration of Indian Education services with other educational programs and with broader educational reforms under way in the States and communities. The reauthorization proposal would require each LEA to develop a comprehensive plan for the education of Indian students. The plan would describe how local, State, and Federal funds would be used to pursue the LEA's goals for Indian students. The plan would have to be consistent with, and promote the goals in, State and local plans developed under the Goals 2000: Educate America Act or, if the State is not participating in Goals 2000, with the State's Title I plan under ESEA. As an accountability measure, LEAs would report periodically to their communities on the progress they have made toward attainment of their goals.

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Our proposal would also make some changes to the allocation formula. Under current law, an LEA is eligible if the number of Indian children enrolled is at least 10 or constitutes at least 50 percent of its total enrollment, so some LEAs receive very small awards. We propose to make grants only to LEAs in which the number of Indian children is at least 20 or constitutes at least 25 percent of total enrollment. Further, the bill would establish a minimum award level of $4,000 below which an otherwise eligible LEA would not receive a grant. These proposed changes will ensure that formula grants are provided in amounts sufficient to make a real difference in the education of Indian children.

H.R. 6 essentially follows the Administration's proposal for this program.

Special Programs for Indian Children

In addition to continuing the Indian-Controlled Schools program, our bill would replace three overlapping programs -- the Planning, Pilot, and Demonstrations program, Educational Services, and Gifted and Talented Education -- with a new, more flexible program of Demonstration Grants. Under this program, the Department would make discretionary grant awards to SEAs, LEAs, Indian tribes, Indian organizations, and institutions of higher education for a variety of activities, including dropout prevention projects, partnerships between LEAs and institutions of higher education, and programs to meet the needs of gifted and talented Indian students.

S. 1513 would not reauthorize the Indian Education Technical Assistance Centers. The Department's current technical assistance efforts in elementary and secondary education are fragmented and categorical in nature, and thus fail to address adequately the needs of States and local educational agencies for help in integrating the various ESEA programs, as well as State and local programs, into a coherent reform and improvement strategy. We propose to replace those efforts with 10 broad based technical assistance centers that would maintain staff expertise in Indian education, as well as other areas. This change would give practitioners and parents the opportunity to receive broader and more comprehensive services than they now receive from Indian Education and other centers.

H.R. 6, the House passed bill, does not include authority for an Indian-controlled schools program as proposed by the Administration and would continue a separate Gifted and Talented authority, but is otherwise very similar to the Administration's bill.

Professional Development and Adult Education

S. 1513 would consolidate the two Educational Personnel Development programs and the Indian Fellowship program into a new authority for Professional Development. Under the current Fellowship program, the Department grants awards to individuals attending various institutions around the country. Under our proposal, the Department would instead make grants to institutions of higher education, and to other entities, such as Indian tribes or Indian organizations, applying in consortium these institutions. Applicants could design courses of study that include elements particularly relevant to the communities that participants would serve upon graduation. The proposed program would support the training of Indian students in fields authorized under current law as well as disciplines not now authorized. The Department would use at least 50 percent of the funds appropriated each year for training educational personnel, in keeping with our priority to provide well-prepared staff for our Nation's classrooms.

For the first time, the bill would authorize the Secretary to require participants who receive training under this program to perform related work or repay part or all of the cost of

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training. This proposal will help enhance program accountability, providing an incentive for recipients to complete their programs and ensuring a solid return on the Federal investment.

The House bill adopts the Administration's proposal in part. H.R. 6 does not require that at least 50 percent of program funds be used for the professional development of educators, and it would retain a separate Fellowships program.

The Indian Adult Education program helps adults to acquire basic literacy skills, complete secondary school, and secure the education necessary for them to benefit from vocational training. The Administration's bill would replace multiple program authorities with one flexible demonstration grant program for improving Indian adult education. H.R. 6 would retain current law.

National Activities

Policymakers interested in Indian education are hindered by a lack of solid information on the educational status of Indians and the effectiveness of programs that serve Indians. The Administration's proposal would authorize the Secretary to conduct research, evaluate federally assisted education programs from which Indian children and adults benefit, and collect and analyze data on the educational status and needs of Indians. The House, in H.R. 6, adopted our proposal.

Grants to State Educational Agencies

We have proposed a new authority to assist States in the development of comprehensive, statewide strategies for the education of Indian children and adults. Our proposal would help ensure attention to Indian education in overall reform strategies under development by States around the country. States would use Federal grants for reviewing

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LEA applications under the formula grant program, data collection and technical assistance to LEAs, in-service training of teachers of Indian students, and other activities designed to build the capacity of the State to meet the educational needs of Indian children and adults. The amount of each State's grant would be based on the number of Indian students in the State, the comprehensiveness and quality of the State's plan, and the State's commitment to high-quality education programs for Indian children and adults.

H.R. 6 does not include this authority for Grants to States.

TITLE I: EDUCATION FOR THE DISADVANTAGED

Eligible children, including Indian children, would benefit from our reauthorization proposal to transform Title I Grants to LEAs. Under S. 1513, Title I would shift from providing remedial instruction to a completely new objective of ensuring that disadvantaged children learn to the challenging standards that all children should be expected to achieve. To help children achieve to high standards, all schools receiving Title I funds would provide enriched curriculum for eligible children, and would enter into compacts with parents that spell out the goals, expectations, and mutual responsibilities to help children make progress toward challenging standards. In addition, the bill would require States to integrate Title I into an overall strategy for achieving State and local educational reforms.

Under current law, one percent of the funds appropriated for Basic Grants to LEAs is allocated to the Outlying Areas and the Bureau of Indian Affairs. Our bill would change the reserve, so that up to 0.8 percent of the State amount for Basic and Concentration Grants combined is allocated to the BIA and Outlying Areas. The 0.8 percent approximates more closely the national share of poor children who attend BIA and Outlying Areas schools.

The House bill would maintain the 1 percent set aside in current law, but apply it against the combined total amount of Basic and Concentration Grants, plus the new Targeted Grants program created in the House bill. H.R. 6 would thus result in a significantly larger percentage increase for the BIA program than for the State program.

Also under Title I, the Even Start program funds projects that integrate early childhood education, parenting education, and adult literacy education into unified family literacy programs. The National Literacy Act of 1991 created a 5 percent set-aside of Even Start funds for grants to Indian tribes and tribal organizations as well as for the territories and programs for migrant children. The Administration and House bills would make no change in the Even Start set aside.

IMPACT AID

A substantial share of Impact Aid funds is distributed each year to school districts that serve Indian children. All children residing on certain Indian lands are regarded as "a" children under section 3 of the current Impact Aid statute, P.L. 81-874. In FY 1993, Impact Aid provided over $250 million to approximately 700 school districts that served nearly 116,000 children residing on Indian lands.

The primary objective of our reauthorization proposal for Impact Aid is to simplify and increase equity in the distribution of Impact Aid for federally connected children. To this end we have proposed a new formula for Basic Support Payments that would consider only the number of federally connected children enrolled in a school district, the average cost of education in each State as measured by the State average per pupil expenditure, and the share of those expenditures that is provided from local sources in each State. Children living on Indian lands would be weighted 25 percent more heavily than other children under the formula, the same as in current law. Should appropriations be insufficient to pay the full cost of payments, all payments would be ratably reduced.

Our proposal also would eliminate payments for the federally connected children counted as "b" children under current law, so that available funds can be targeted toward federally connected "a" children, including children living on Indian lands. In addition, while current law provides increased payments for children with disabilities under the basic formula, S. 1513 would authorize separate Supplemental Payments for federally connected children with disabilities. We believe that this approach will facilitate enhanced analysis of this element of Impact Aid and enable Congress to provide targeted increases for these payments, if appropriate.

Our proposal would also eliminate the current Impact Aid Construction authority and replace it with a new authority for formula payments to school districts whose students residing on Indian lands constitute at least 50 percent of total enrollment. Unlike the current construction program, which makes grants for specific new construction projects, these funds could be used for a variety of construction-related activities; it would be up to the recipient districts to decide on their own priorities and use these funds for such things as renovations, major structural repairs or modifications, other capital improvements, or to service debt undertaken for these purposes. This program would enable the districts with the greatest need for construction assistance to alter facilities to meet their changing needs and to extend the useful life of facilities that might otherwise become obsolete and unusable for contemporary educational programs.

H.R. 6, while adopting some aspects of our proposal, would provide a more complex payment formula for federally connected children. The H.R. 6 formula considers weighted student counts of federally connected children, including children currently counted as military and low-rent housing "b" children, and provides four alternative methods for estimating the local cost of educating the children, in order to provide the most generous entitlement possible. If appropriations are insufficient to provide payments of the full cost of this formula, H.R. 6 would provide a complex method of reducing payments based on the percentage of federally connected children in each school district and the share of each district's budget that its full entitlement would comprise. This reduction formula would essentially undo the distribution arrived at through the entitlement calculation, and would favor smaller, heavily "impacted" school districts and school districts that make comparatively little local tax effort, at the expense of larger school districts and those that make increased tax effort.

H.R. 6 also includes a separate authority for supplemental payments for children with disabilities, similar to our own proposal. It would also preserve, in modified form, the current construction authority. It would not provide formula payments for construction in heavily "impacted" Indian districts.

BILINGUAL EDUCATION

The Bilingual Education Act authorizes discretionary grants, primarily to local educational agencies, to support programs for limited English proficient students. For purposes of the Act, an Indian tribe or tribally sanctioned educational authority is considered to be an LEA. Since its inception, this program has funded a significant number of projects designed wholly or in part to benefit Indian students. In fiscal year 1993, projects served approximately 26,000 Indian students. These projects primarily assist students in learning English and in meeting grade promotion and graduation requirements. The changes proposed in S. 1513 would not alter the way in which Indian students are served but would ensure that limited English proficient students benefit from State and local educational reforms and would assist those students in meeting the challenging State standards developed for all students.

H.R. 6 would create a curriculum development authority for instructional materials in Native American, Native Hawaiian, and other languages for which instructional materials are not readily available. Otherwise, H.R. 6 is very similar to the Administration's proposal.

CONSOLIDATED SET-ASIDE FOR INTERIOR DEPARTMENT FUNDS

Our reauthorization proposal includes a provision for the Secretary to transfer to the Department of the Interior, in a consolidated payment, the amounts set aside from elementary and secondary formula grant programs and the amounts generated by BIA schools under Indian Education formula grants. Interior would then expend these funds in a manner that best meets the purposes of those programs, pursuant to an agreement between the two Department in consultation with the tribes. The agreement would set performance measures, including measurable goals and objectives, for determining the success of the consolidated program. This proposal, consistent with our overall emphasis on flexibility coupled with accountability, would provide the Interior Department with much greater ability to channel funds to areas of greatest need while reducing the administrative burden in both agencies.

OTHER ESEA PROGRAMS SERVING INDIANS

The Department is proposing to expand the current Eisenhower Mathematics and Science Education program in order to provide educators with intensive, high-quality professional development in all the core academic subjects. The new Eisenhower Professional Development program would consolidate the current Eisenhower Mathematics and Science Education State Grants and Chapter 2 State and Local programs. Although

Eisenhower has a 0.5 percent set-aside for BIA-operated and supported schools. Chapter 2 has none. Since Chapter 2 represents approximately 60 percent of the resources being consolidated, the BIA is currently receiving a set-aside equivalent to 0.22 percent of total current funding. We propose to replace this funding with a set-aside of 0.25 percent of formula grants under the new Eisenhower program. H.R. 6 would instead provide a 0.5 percent set-aside.

The Administration's reauthorization proposal for Safe and Drug-Free Schools and Communities would improve the current Drug-Free Schools program by taking a comprehensive, integrated approach to drug and violence prevention; targeting resources to high-need schools and communities; and linking State and local efforts to measurable goals and objectives. Up to one percent of the appropriation for State Grants would be reserved for drug and violence prevention programs serving Indian children in BIA-operated or supported schools. As under the current program, the Department would transfer these funds to the BIA. The Administration's proposal and H.R. 6 are very similar on these provisions.

Under the Stewart B. McKinney Homeless Assistance Act, the Secretary may reserve up to 1 percent of the appropriation for Education for Homeless Children and Youth programs for Indian students in BIA schools. The Administration's reauthorization proposal would enable this program to deal more effectively with the major barriers that all homeless children face in enrolling and succeeding in school, by facilitating access to Title I services; encouraging services to preschool children; and requiring that, to the extent feasible, homeless children receive transportation to and from school, at no cost to them. H.R. 6 contains each of these elements, with the exception of the no-cost transportation requirement.

This concludes my overview of the Administration's ESEA reauthorization proposal and H.R. 6 with regard to American Indian and Alaska Native education. I want to emphasize that our reauthorization proposal embodies our strong commitment to the education of American Indian and Alaska Native children and adults. As I stated in the beginning of my testimony, our proposal recognizes that support for State, local, and tribal activities through a restructured Federal effort is necessary to ensure that all children achieve to high standards. My colleagues and I will be happy to respond to any questions you may have.

NATIONAL INDIAN EDUCATION ASSOCIATION

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STATEMENT OF THE NATIONAL INDIAN EDUCATION ASSOCIATION

BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

ON REAUTHORIZATION OF ELEMENTARY AND SECONDARY EDUCATION PROGRAMS

MAY 4, 1994

Presented by:
Phil Baird, President

Mr. Chairman and Members of the Committee, on behalf of the National Indian Education Association, I appreciate the opportunity to appear before this Committee to present our views on reauthorization of federal elementary and secondary education programs. I am Phil Baird, President of the National Indian Education Association (NIEA), and an enrolled member of the Rosebud Sioux Tribe in South Dakota.

The National Indian Education Association, which celebrates its Silver Anniversary this year, is a nonprofit organization of several thousand individuals, most of whom are Indian, Aleut, or Inuit. The interests and expertise of NIEA members span all aspects of education. NIEA hosts a conference which is the largest annual gathering of Indian and Alaska Native people. The paid attendance at our 1992 conference in Albuquerque was 3,700, and we expect attendance to reach that mark at our October 15-19, 1994 meeting in St. Paul, Minnesota.

Our testimony provides comment on BIA education law and the Indian Education Act over which this Committee has jurisdiction, and we also offer comment on education programs which are under the jurisdiction of the Labor and Human Resources Committee. Several members of the Indian Committee -- Senators Simon, Kassebaum, and Wellstone -- also serve on the Labor and Human Resources Committee, and we ask for help on those Indian-specific provisions which fall outside the jurisdiction of the Indian Committee.

We are heartened by last Friday's meeting at the White House between tribal leaders and President Clinton and by the Executive Order issued concerning consultation with tribes. Certainly more Department of Education consultation with tribes and Indian organizations is needed. *We would like to see as one of the first concrete examples of the new Executive Order on tribal consultation, a listening conference specific to Indian education.* We would want the Secretaries of Education and Interior and also representatives of other federal agencies to attend. We applaud the listening conference with tribes being hosted by Attorney General Reno and Secretary Babbitt in Albuquerque this week, but we understand that meeting is devoted primarily to law enforcement and gaming issues; education is not on the agenda.

NIEA has met numerous times with staff of the Senate Committee on Indian Affairs and discussed with them our proposed elementary and secondary education amendments. We greatly appreciate their time and interest in this legislation. NIEA's legislative recommendations were drawn from NIEA resolutions, from recommendations made at legislative sessions at our annual conferences, from recommendations submitted to us as the result of our mailings to tribal governments and Indian organizations, from NCAI resolutions, from communications with federal officials, and from recommendations of the White House Conference on Indian Education and the Department of Education-sponsored Indian Nations at Risk report.

If there is but one message we want to communicate it is that we as Indian and Alaska Native people and as tribal members, want to strengthen education for our people through our own institutions and communities. We very much desire, and seek, an active role in this nation's school reform effort. But to accomplish this, we must be the central force on matters that directly affect our own lives. We know that the best chance for success in education is one in which there is community and parental involvement, and for Indian country, that also means involvement of tribal governments. One of the outcomes of tribal involvement in education is increased emphasis on Native languages, on Indian history, on tribal government, and on curricula designed to meet the needs of reservation economies. Unfortunately, the Administration's current education proposals call for state-driven initiatives with very little accommodation made for the legal status and rightful role of tribes. This has left us in the position of having to rely solely on Congress to amend pending legislation to address our concerns, the outcome of which yields mixed results.

An an example, the school reform, the elementary and secondary education reauthorization, and the school-to-work bills drafted by the Administration would place greatly increased emphasis on state plans and state responsibility with little or no accommodation or proposed involvement of tribal governments or the BIA school system. These and other bills carry the constant themes of development of state plans, setting of state standards, review and comment by states on local plans, and funding for State Educational Agencies and for Local Educational Agencies but not for Tribes or BIA schools. And under the guise of a streamlining process, the Administration has proposed to weaken some of the education accountability systems which Indian people worked long and hard to obtain. For instance, the

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Administration has proposed the elimination of the tribal grievance procedures under the Impact Aid law and allowing IEA monies to be used for schoolwide projects without Indian parent committee approval. These bills as proposed by the Administration simply miss the mark with regard to our goals of tribal self-determination and community-based education for Indian and Alaska Native people. We will continue to work with Congress to add provisions to these bills to include tribal government and BIA school involvement and funding eligibility. We also intend to work more intensely with the Administration in the formulation of its legislative proposals.

Because Tribal governments are legally distinct from State governments, it is not appropriate for state standards and evaluations to be imposed on reservation-based schools. Federally-funded education programs must provide authorities and commensurate funding and resources for tribal involvement. Tribes need federal funding to help develop tribal departments of education which can engage in developmental work and place them in better positions to negotiate or enter into agreements with state and local governments as equal partners in our nation's school reform efforts.

Below are some of the provisions we ask be included in the Senate version of the elementary and secondary education reauthorization legislation (S. 1513). We have arranged them by program. We have also proposed additional amendments, largely technical in nature, which we have provided to staff and will not reiterate them here. *We ask you to view our proposals in the context of our desire to strengthen the role of tribal governments, Indian parents and community members, of providing education which is more culturally relevant, and our determination to establish stronger partnerships among Tribal, state, and federal education entities.*

BUREAU OF INDIAN AFFAIRS EDUCATION LAW.

- Budget Formulation/Dueling Budgets. Perhaps the most urgent need with regard to the 184 elementary and secondary schools in the BIA system is for the development and funding of a needs-based budget. The first choice of NIEA and the Association of Navajo Community Controlled School Boards (ANCCSB) is for the development of a needs-based budget for the BIA schools, and then to make the funding of the basic school operational and transportation costs an entitlement. We fully understand the difficulty in creating new entitlements -- even one as modest as the one we proposed. The House did not adopt the entitlement proposal proposed by NIEA and ANCCSB, and it seems unlikely that the Senate will either.

However, we do appreciate the fact that H.R. 6 requires the BIA to examine and report to Congress on whether to change to a school-based budget system. We support inclusion of this provision in the Senate bill. The House bill would also require the National Center for Education Statistics to prepare, for 3 consecutive years, a proposed budget for the BIA schools and submit it to Congress. This budget is to propose an amount necessary to achieve established academic and residential

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program standards. The Interior Department would continue to prepare its own budget request for the schools, thus allowing us to compare the two proposals -- hence the term "dueling budgets." *We support the provisions in H.R. 6 regarding study of a needs-based budget and the submission by an outside entity of a BIA education budget.*

- Demographic Data Collection. A major contributing factor in the submission of too-low budgets for BIA schools has been the inability of the Bureau to accurately project school enrollment. H.R. 6 would require that within 2 years of enactment a Division of Budget Analysis would be established under the direct supervision of the Office of Indian Education Programs. The Division would gather demographic data on BIA-funded schools in order to more accurately project enrollment. Such information is to be used in by OIEP and the Assistant Secretary for Indian Affairs in developing their proposed budgets. NIEA and others in the Indian education field are not satisfied with many of the budget recommendations made by the BIA budget office in the area of education, nor the power it has over education matters, and we are hopeful that a Division of Budget Analysis in OIEP will bring a more learned BIA education budget. *We support inclusion in the Senate bill of the provision in H.R. 6 establishing a Division of Budget Analysis in OIEP for the purpose of improved demographic data collection. We concur with the ANCCSB proposal that the National Center for Education Statistics should provide assistance to the new division if so requested.*

- Funding Match Requirement. BIA-funded schools are at a disadvantage in applying for many federal grant programs which require that there be a non-federal match. Since virtually all the money for the BIA-system schools is federal, these schools have no source of funds with which to provide a match. H.R. 6 would declare funds received from the BIA to be "non-federal" for purposes of meeting match requirements. *We support the inclusion in the Senate bill of the provision in H.R. 6 which would deem BIA funds to be considered as non-federal funds.*

- Native Language Programs in BIA schools. We thank this Committee for its strong support of the preservation of Native languages as evidenced by the enactment of two native language bills, one a federal policy statement supporting federal efforts to help preserve and enhance the use of Native languages and the other an authorization for Native language grants through ANA.

One way to provide for additional or expanded Native language programs in BIA schools would be to add a .25 weight to the ISEF formula for schools which want to have Native language programs. *Our ISEF Native language proposal is not contained in H.R. 6, and we request its inclusion in the Senate bill.*

- Adult Education. *We ask that the Director of OIEP, one of whose statutory duties is to administer adult education services, be required to designate a person to head up or coordinate the BIA's adult education services.* The BIA adult education efforts have lacked leadership and coordination.. H.R. 6 does not contain this provision.

INDIAN EDUCATION ACT (IEA).

• State Review of Applications. NIEA strongly objects to the Administration's proposed required review and comment by SEAs of local schools' Indian Education Act formula-grant applications, a provision which is in H.R. 6. This is exactly the opposite of what we seek. We seek strong tribal involvement and community control, not state control. As we understand it the House Education and Labor Committee had intended to remove the SEA review and comment on Indian Education Act applications, but for whatever reason, this was not done.

We point out to the Committee that the Administration has also proposed in the Bilingual Education Program that there be SEA review of bilingual education applications, but that the House, in deference to the issue of tribal sovereignty and the sensitivities of Indian communities, carved out an exception for Indian applications. We are informed that the Administration will not attempt to gain SEA review of Indian bilingual applications in the Senate bill, and we ask that the same treatment be accorded the IEA applications. On a practical level, SEAs do not have the personnel nor the expertise to review and comment on Indian Education Act applications. And when you consider that the Administration wants SEA review of a wide array of applications and plans -- ranging from bilingual to Chapter 1 to school reform and school-to-work plans -- it makes no sense at all. *We ask for removal of state review of Indian Education Act applications in the Senate bill.*

• Fellowship Program. The Administration proposed to change the IEA fellowship program from one of direct scholarships to students to one where funding would be awarded to selected institutions who in turn would award the fellowships. We oppose this proposal because it would greatly limit the choices a student would have in choosing a college should he or she want to apply for an IEA fellowship. *We are pleased that the House maintained the fellowship program as one where awards are made directly to the student, and ask that the Senate bill do likewise.*

We also support contracting out the fellowship program to an Indian organization, believing that it is more efficient to contract it out than to have federal employees reading grant applications. A recent Inspector General's report was critical of the administration of the IEA fellowship program, and we believe that contracting out this program would improve the administration of it. We point out that the BIA has for many years, with great success, contracted out the administration of its graduate scholarship program to the American Indian Graduate Center in Albuquerque. The Graduate Center is able to utilize the BIA funds as leverage to access other non-federal funds for Indian and Alaska Native graduate students.

- Indian Education Technical Assistance Centers. There are currently 6 Indian Education Technical Assistance Centers which are established under the authority of the Indian Education Act. These centers provide hands-on assistance to about 1200 schools, to tribal governments, and to parent committees concerning the development of Indian Education Act programs and parental rights and responsibilities under the IEA. We oppose the Administration's proposals to eliminate these 6 centers and to allegedly fold their functions into 10 comprehensive centers in Title II. The Administration's proposal is clearly designed to serve SEAs, and only parenthetically would serve LEAs (the proposal says the comprehensive centers would serve LEAs "to the extent possible"), and proposes to serve parent committees not at all.

While the House did not retain the 6 Indian centers, it did add language in the comprehensive centers provisions which would specifically require service to tribes and BIA schools. While we welcome this language and want it retained in the Senate bill (should the Senate adopt the comprehensive centers idea), we nevertheless believe there would still be a critical need for the hands-on assistance provided by the 6 existing Indian technical assistance centers. The comprehensive centers would serve a very wide range of technical assistance needs, while the Indian centers mission is specific to the Indian Education Act. Our request, in terms of technical assistance, are:

-- reauthorize the existing 6 Indian technical assistance centers under the authority of the Indian Education Act;

-- retain the House language in Title II of H.R. 6 concerning the comprehensive centers' responsibility to serve and involve Tribes, tribal departments of education and BIA schools. Also retain the provision which requires preference in application for comprehensive centers for consortia which include Indian organizations;

-- consistent with the treatment afforded to 16 bilingual technical assistance centers in H.R. 6 -- whose existing contracts would be extended through FY1996 in order to allow a transition period into the new comprehensive centers -- extend the Indian center contracts through FY1996.

- Tribal Operation of IEA Programs When LEAs Don't Apply. *We propose that when an LEA has not applied for an Indian Education Act formula grant for which it would be eligible, that the tribal government be allowed to be the applicant and administer the program.* We point out to the Committee that this would not be a new area for tribes, as tribal governments are already the applicants for various education-related monies, including Johnson O'Malley, Head Start, and the Child Care and Development Block Grant.

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- Funding for Tribes. NIEA proposed as part of Subpart 2 of the Indian Education Act, that a new program of grants be authorized for tribes and tribal organizations to develop education codes, to coordinate education programs, to provide technical and support services to schools serving Indian children, and to provide child-find screening services for pre-school aged children *This grant program is not included in H.R. 6, and we ask that it be adopted as part of the Senate bill.*

- Schoolwide use of IEA Monies. As proposed by the Administration, H.R. 6 would allow IEA grant funds to be used for schoolwide projects. NIEA objects to use of these "special purpose" funds for schoolwide projects without any assurance that they will address the educational needs of the children who attracted the funds -- Indian children. All that Sec. 6105(c) of H.R.6 requires is that "adequate provision" is made for the "participation" of Indian children. This is a statement of the obvious. Of course Indian children must be permitted "participation". If they were excluded, a major civil rights violation would be committed.

Sec. 6105(c) would also erase the right to hands-on involvement in development of the IEA program that is directed in the immediately preceding section. To go schoolwide with IEA money, the LEA only has to make "adequate provision" for the "involvement" of Indian parents. Unlike, Sec. 6104, it does not require affirmative Indian parent committee approval of a program.

NIEA does not blanketly object to the use of IEA funds for schoolwide projects, but does believe that certain conditions should be met before such use is allowed. The LEA should first have to meet a certain minimum Indian student enrollment -- we suggest 65% in SY95-96, and 60% thereafter. This is modeled on the companion provision for schoolwide programs in Sec. 1114 of H.R. 6.

In addition, the parent committee should have approval authority over schoolwide use of IEA funds. These parent committees must approve regular IEA program applications; there is equal -- if not greater -- justification for these committees to approve schoolwide programs. Finally, we believe the statute should require that any schoolwide program which includes IEA grant funds must be consistent with Sec. 6002 -- the purposes section for the Indian Education Act.

- Fellowship and Educational Personnel Development (EPD Service Payback. Consistent with NIEA recommendation, the House, in H.R. 6, rejected the Administration's proposals and maintained the fellowship and educational personnel development programs in their current structure and adds a required service payback in return for funding under those programs. The Administration had proposed that, at the Secretary's discretion, a service payback program be implemented. It may have been an oversight, but the Administration's bill did not require that the service payback be in programs which are of direct benefit to Indian and Alaska Native people. *The House bill makes the service paybacks for the fellowship and EPD programs mandatory, and requires that such service be in* *programs which benefit Indian/Alaska Native people. We urge the Senate to adopt these House provisions.*

• Funding Floor for Formula Grants. H.R. 6 provides that in order for a school to be eligible for an IEA formula grant, it must have 20 eligible students (up from the current level of 10) or have 25% of its student population as eligible for the program (down from the current level of 50%). It would impose the additional requirement that a school or consortium of schools, must generate at least $4,000 in funding to be eligible for a grant, a requirement which would eliminate a number of schools from the program.

Current law provides an exception for LEAs on or near reservations and for LEAs in Alaska, Oklahoma and California to the requirement that an LEA have at least 10 Indian students or that the school's population is 50% Indian in order to receive a formula grant. The Administration proposed to eliminate these protections for Indian country, and H.R. 6 adopted that recommendation. The Administration has not provided information about what would be the impact of this proposal.

NIEA's proposal is to maintain the current 10 student minimum requirement and provide a guaranteed base funding of $5,000 for each school which meets the 10 student minimum. (The latest information we have indicates that there are 77 schools which receive grants of less than $5,000.)

• Comprehensive Plans for IEA Formula Grant Applications. NIEA proposed that as part of the application for IEA formula grants, schools must develop comprehensive plans for the use of all sources of funding for the education of Indian students. The Administration's bill contained a similar proposal, which was adopted by the House as part of H.R. 6, which requires that LEA formula-grant applications:

-- contain a comprehensive program for meeting the needs of Indian children including their language and cultural needs;

-- be consistent with state and local school reform plans;

-- include academic content and student performance standards based on state standards;

-- explain how federal, state and local programs, especially those under the Chapter 1 program, will meet student needs;

-- demonstrate how the program will carry out the comprehensive plan;

-- describe how professional development will ensure that teacher and other school professionals are prepared to work with Indian children and how teachers who will be involved in the project have been properly trained to carry it out;

--describe how the agency will periodically assess the progress of all Indian children in its schools and how it will provide the results of this assessment to the parent committee and to the community; and

-- describe how the agency will respond to the findings of assessments.

We generally support the above new required comprehensive plan, including the requirements for professional development, but ask that the Senate add language which allows for utilization of tribal school reform, academic and assessment standards and which also requires the plan to include parental involvement.

IMPACT AID

- Funding Formula. *We support the Impact Aid formula in the House-passed bill over the one proposed by the Administration.* The Administration's proposal would adversely affect many Indian districts because it is based on average per pupil expenditures within each state. Many heavily impacted Indian schools are in states with low average per pupil expenditures, but the Indian schools often have per pupil expenditures higher than the state average (due to rural location, transportation costs, special needs of students). When the Administration's funding formula is implemented, the use of the state average approach discriminates against the higher spending Indian districts within that state.

- Tribal Grievance Procedure. We strongly oppose the Administration's proposal to eliminate the administrative grievance procedure which tribes can utilize with school districts whom they believe have not complied with the Impact Aid law. While the grievance procedure has been used relatively few times through its entire process, its very existence has been helpful in getting schools to come to terms with tribes so that they do not have to go through a grievance procedure. *H.R. 6 would not restore the current statutory tribal grievance procedure under the Impact Aid law, and we request that the Senate reinstate the grievance procedure in its bill.*

- Construction. We are very unhappy with both the Impact Aid construction proposal put forth by the Administration and the one adopted in H.R. 6. The Administration proposed to provide funding, by formula, to every school on Indian lands which has 50% Indian students -- the result would be (assuming it is funded at $5 million, the amount requested by the Administration for FY1995) a few thousand dollars per school for what amounts to minor repairs with no hope of new school construction. The House bill would reauthorize an Impact Aid construction program, but at its current services level, about $11 million. *We understand that the Labor and Human Resources Committee is considering using as a basis for construction the bill introduced by Senator Mosely-Braun which would authorize $600 million for construction of schools in counties which receive Chapter 1 concentration grants -- we would certainly support such an approach.*

We continue to recommend that Congress and the Administration work together to develop a systematic school construction program for public schools on Indian reservations. A number of years ago Congress mandated that the Indian Health Service develop a 10-year plan for construction of sanitation facilities in Indian country, a strategy which has proven very beneficial and resulted in annual appropriations to at least partially address the staggering backlog of needed sanitation facilities. Similarly, we believe the development of such a long-range plan for school facility needs on Indian reservations would provide Congress with a strategy and the necessary information which would hopefully lead to annual appropriations for this purpose.

BILINGUAL EDUCATION. We believe that H.R. 6 with regard to the bilingual education program as it affects Indian and Alaska Native people is an improvement over current law and over the Administration's proposal. The Administration's proposal is also somewhat better than current law in its recognition of value of Native languages. The bottom line is that we support any proposal which would provide any assistance in stopping the loss of Indian and Alaska Native languages and further their use. Specific provision in H.R. 6 which we support are:

-- first and foremost, preference for applications which promote bilingual education -- proficiency in English and another language. This is what we seek, proficiency in both a Native language and in English. The Administration's bill would allow for programs which promote Native language use only "to the extent feasible.";

-- authorization for grants for the development, publication and dissemination of instructional materials for Native American, Native Hawaiian and other languages for which instructional materials are not readily available;

-- requirement that readers of grant applications have expertise in Native languages;

-- broadened eligibility for grants by including tribally-sanctioned entities which serve education purposes;

-- exemption for Indian applications from the requirement that there be SEA review of bilingual applications -- we support removal of the SEA review for everyone;

-- provisions in the findings sections regarding federal responsibility for provision of education for Native people and statement that :

> *a recognized means by which a child learns is through the use of the child's native language, cultural heritage, and instructional programs which use and build upon child's non-English native language and cultural heritage to promote parent and community involvement in education, student self-esteem, proficiency in English, and subject matter achievement."*

• NIEA also proposes that Section 7022(j) of ESEA be amended to give Indian and Alaska Native languages a status similar to that of Spanish for children in Puerto Rico. Under current law, Bilingual Education programs in Puerto Rico may make provision for serving the needs of students are have limited proficiency in Spanish.

TECHNICAL ASSISTANCE.

As noted above, we want the 6 Indian education technical assistance centers which are currently authorized under the Indian Education Act to be reauthorized. We also request that should the Senate adopt the megacenters or comprehensive centers idea as proposed by the Administration, and a revised version of which is in H.R. 6 *we ask that you the Senate bill adopt the following provisions found in the House-approved legislation:*

-- references that service be provided to tribes and BIA schools.;

-- preference given to funding applications for comprehensive centers serving Indian students to consortia that include Indian educational agencies, organizations, or institutions;

-- the requirement that the staff of the comprehensive centers maintain staff expertise in meeting the needs of Indian, Alaska Native, and Native Hawaiian children;

-- the provision that at least as many resources now being devoted to the Indian education technical assistance centers be provided in the new comprehensive centers;

-- the provision that the BIA be considered a state for purposes of serving BIA-system schools through the National Diffusion Network.

LOCAL EDUCATIONAL AGENCY DEFINITION SHOULD INCLUDE BIA SCHOOLS.

BIA system schools are at an enormous disadvantage in accessing many federal sources of funding because they are not defined as Local Educational Agencies (LEAs). The House bill partially corrects this problem by making BIA schools LEAs for purposes of Department of Education discretionary grant programs. The House provision, however, would still leave the BIA schools ineligible to receive funds for LEAs from formula-driven DOE programs (e.g., Chapter 1 Concentration Grants) and for funds for LEAs from non-Education Department programs.

We ask that the Senate amend the House language to ensure that the BIA-system schools are considered LEAs for all federal funding purposes, except where the statute already makes express provision for funding to BIA schools (e.g., the main Chapter 1 program).

CHAPTER 1

• Funding for BIA Schools. The Administration proposes to reduce the amount of funding provided to BIA-system schools and the territories. Currently the BIA schools and territories share a 1% allocation of Chapter 1 funds. The Administration proposes to reduce this to an unknown amount of "up to .8%." We are outraged that this funding cut is proposed in light of the gross underfunding of BIA schools, in light of the extremely high poverty areas from which these children come, and in light of the small nature of these widely scattered schools on Indian reservations, a smallness which limits any economy of scale.

We thank the House for restoring, in HR. 6, the full 1% of Chapter 1 funding, and ask the Senate to do likewise.

• Concentration Grants. *We ask for an amendment which would make BIA schools eligible for the Chapter 1 Concentration Grant program, a request which is certainly borne out by poverty statistics.*

The percent of Indian people nationally who are below the poverty line is 30.9%, which compares to the White rate of 9.8% and national rate of 13./1% (1990 Census). Indian children have a 38.8% chance of being in poverty. South Dakota has the highest state poverty rate for Indian children (63.3%). Other Indian children state poverty rates include North Dakota (58.3%), Nebraska (57%), Minnesota (54.8%), Montana (53.4%), Arizona (53.1%), New Mexico (50%), Wyoming (49%), Utah (47.3%), Idaho (40.5%), Washington (37.7%), Oklahoma (34.9%), and Oregon (32.3%). (Children's Defense Fund analysis of 1990 Census Data).

• Chapter 1 Services to Limited English Proficient Children. *We support the new language in H.R. 6 which would require more emphasis on the Chapter 1 program serving children whose Native language is not English.*

GIFTED AND TALENTED PROGRAM PROPOSALS

NIEA firmly believes that we must identify gifted and talented (G+T) children early on, and nurture their gifts. It has been our experience that G+T identification in economically disadvantaged communities -- such as Indian reservations -- is often overlooked. To address these needs and problems, NIEA proposes two efforts, described below, which we ask this Committee to recommend to the Labor & Human Resources Committee:

• *Pre-school Gifted + Talented Demonstration Project* -- This program is intended to identify and assess the gifts and talents of disadvantaged children -- including reservation-based Indian children. Many G+T children from disadvantaged backgrounds do not have their talents and skills recognized or addressed because of lack of supportive environments at home or school. It would set up a demonstration project for G+T identification, curriculum development, service modeling, and parent education in conjunction with at least 5 Head Start Centers (in order to reach disadvantaged pre-school aged children). The empirical data gathered from the demonstration program would provide specific guidelines on implementation and administration of a G+T pre-school program.

• *Feasibility Study for Indian G+T Academy* -- This proposal would direct the Secretary of Education to examine the feasibility of establishing an academy for gifted and talented Indian/Alaska Native youth. A primary motivation for this recommendation is the fact that in most public schools, Indian children are expected to meet only the level of "average"; those who are G+T are too often overlooked. Furthermore, cultural differences as to just what constitutes "gifts" and "talents" can be starkly different in Indian societies, as compared with the dominant culture.

For valuable insight into this topic, we commend to the Committee the April, 1994 publication from the Department of Education, Javits Gifted + Talented Education Program, Identifying Outstanding Talent in American Indian and Alaska Native Students, and provide a copy for the record.

Attached is the paper on education submitted by the National Indian Education Association and the National Congress of American Indians which was included in the briefing book provided to President Clinton for his April 29, 1994 meeting with tribal leaders (Attachment A) and a summary of the recommendations contained in this testimony (Attachment B).

ATTACHMENT A

NATIONAL INDIAN EDUCATION ASSOCIATION

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STATEMENT OF THE NATIONAL INDIAN EDUCATION ASSOCIATION AND THE NATIONAL CONGRESS OF AMERICAN INDIANS

PREPARED FOR THE TRIBAL LEADERS MEETING WITH PRESIDENT CLINTON

THE WHITE HOUSE
WASHINGTON, D.C.

APRIL 29, 1994

The National Indian Education Association and the National Congress of American Indians jointly submits this statement to President Clinton about the education of American Indians and Alaska Natives on the occasion of the April 29, 1994 tribal leaders meeting with the President at the White House.

This statement is a product of the partnership between two of the nation's oldest and largest Indian organizations. The National Congress of American Indians, established over 50 years ago as tribal government non-profit membership organization, represents the broad interests of 169 Indian Nations. The National Indian Education Association, which celebrates its Silver Anniversary this year, is a nonprofit organization of several thousand individuals, most of whom are Indian, Aleut, or Inuit. The interests and expertise of NIEA members span all aspects of education.

While we applaud the Clinton Administration's aggressive interest in promoting education reform, we believe the unique circumstances and needs of Indian education have been largely overlooked. We also want education reform, but the needs of Indian education cannot be addressed through the state-driven approach embodied throughout the Administration's legislative proposals. Improved education for Indian and Alaska Native students requires direct involvement of tribal governments and organizations, of Indian parents, of local communities. It also requires partnerships -- with Tribes as full participants -- with states, the federal government, and academic and other institutions. We believe that the commitment to education of Indian and Alaska Native people and of the Administration provides the common ground for us to successfully work together toward reaching our education goals.

Our basic requests of the Clinton Administration are:

1) We request a formal acknowledgement of the federal trust responsibility for Indian and Alaska Native education from pre-school through postsecondary.

2) We request that the trust responsibility be embodied in policies and funding proposals which will empower Native people to adequately plan and direct education programs for their people, including programs for the teaching of Native languages and other culturally relevant curricula, and issuance of an Executive Order as requested by the tribal colleges.

3) We request that legislative proposals recognize, respect, and further the roles of tribal governments, Indian organizations, and the BIA school system.

4) We request increased funding for BIA schools and higher education institutions and other Indian education programs.

Because of the sovereign status of Indian Tribes, the existence of a federal Indian education system (BIA schools and higher education institutions), and the large body of Indian law, it requires constant vigilance and also consultation with those affected to design legislative and other proposals which are legally and culturally appropriate.

Tribal Governments and Education. The government-to-government relationship between the Federal and Tribal governments is a Constitutional relationship, and the U.S. recognizes 535 Indian and Alaska Native governments. Tribal governments are separate from State governments, and are not subsets of them. Many federal statutes provide for direct funding to tribal governments so that Tribes can design and administer their own programs. Among activities undertaken by tribal governments are the administration of their own police departments, courts, schools, health facilities, social service programs, and the development and enforcement of environmental and other codes. Many of these are programs formerly run by the Bureau of Indian Affairs and the Indian Health Service, but now administered by Tribes under the authorities of the Indian Self-Determination and Education Assistance Act (P.L. 93-638) and the Indian Education Act of 1988 (P.L. 100-297). Tribally chartered boards now administer 88 BIA-funded elementary and secondary schools and 24 tribal colleges.

Tribal governments administer an array of education programs -- Johnson O'Malley, Head Start, Child Care and Development Block Grant, Adult Education, vocational education, and scholarships. Additionally, Indian parent committees have direct input into the Indian Education Act program in public and BIA schools, and tribal governments have a statutory role in the Impact Aid program. Many tribes, with community input, have developed tribal education codes and standards. Tribes and tribal colleges are active in development of curricula which embodies Native languages, tribal history, tribal government and other courses of study specific to the unique needs of their communities.

The Administration's Legislative Proposals Have Not Taken Tribes Into Account. The Administration's legislative proposals for education have not been sufficiently sensitive to the legal status of Indian Tribes nor of the existence of the Bureau of Indian Affairs school system. This has left us in the position of having to rely solely on Congress to amend legislation to address our concerns, the outcome of which yields mixed results. To the extent that legislation has already been proposed by the White House, we ask for the Administration to support legislative changes which will further our principles of tribal self-determination and community-based education.

An an example, the school reform, the elementary and secondary education reauthorization, and the school-to-work bills drafted by the Administration would place greatly increased emphasis on state plans and state responsibility with little or no accommodation or proposed involvement of tribal governments or the BIA school system. These and other bills carry the constant themes of development of state plans, setting of state standards, review and comment by states on local plans, and funding for State Educational Agencies and for Local Educational Agencies but not for Tribes or BIA schools. And under the guise of a streamlining process, the Administration has proposed to eliminate some of the education accountability systems which Indian people had worked long and hard to obtain, such as a tribal grievance procedures under the Impact Aid law and Indian parent committee signoff on Indian Education Act applications. These bills as proposed by the Administration simply miss the mark with regard to our goals of tribal self-determination and community-based education for Indian and Alaska Native people. We have, and continue, to work with Congress to add provisions to these bills to include tribal government and BIA school involvement and funding eligibility.

Because Tribal governments are legally distinct from States governments, it is not appropriate for state standards and evaluations to be imposed on reservation-based schools. Federally-funded education programs need to allow room for tribal involvement. Tribes need federal funding to help develop tribal departments of education which can engage in more developmental work and put them in better positions to negotiate or enter into agreements with state and local governments.

Funding. Despite the fact that we are in very tight budgetary times, the Administration has a special obligation, based on the U.S. trust responsibility toward Indian Tribes and on the financial need in Indian country, to make funding of Indian education a priority.[1] This Administration has proposed major financial increases for selected programs and initiatives including Head Start, Chapter 1, Goals 2000, School-to-Work, and Even Start. We do not disagree with emphasis on these programs, and indeed, Indian and Alaska Native people will benefit from such increases. But we must not overlook the fact that the Federal Government funds a school system for Indian children. It is financially responsible for 184 elementary and secondary schools and dormitories which serve 45,000 students on 63 reservations in 23 states and for a system of 29 tribal college and BIA postsecondary institutions. These elementary and secondary schools struggle with less money per student, with less money per transportation mile, and, by and large, with poorer facilities than public schools[2]. Likewise, public schools on Indian reservations, which lack a viable tax base, are in desperate need of facilities construction funds. Proper facilities are an important part of a student's learning environment.

The reservation-based tribal colleges operate on per student expenditures which are much less than funding provided to other federal higher education institutions or the per student amount spent by other

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[1] The percent of Indian people below the poverty line is 30.9%, which compares to the White and national rates of 9.8% and 13.1%, respectively. (1990 Census).

Indian children have a 38.8% chance of being in poverty. South Dakota has the highest state poverty rate for Indian children (63.3%). Other Indian children state poverty rates include North Dakota (58.3%), Nebraska (57%), Minnesota (54.8%), Montana (53.4%), Arizona (53.1%), New Mexico (50%), Wyoming (49%), Utah (47.3%), Idaho (40.5%), Washington (37.7%), Oklahoma (34.98%), Oregon (32.3%). (Children's Defense Fund analysis of 1990 Census data).

Household income for Indians is $20,025 which compares to the national average of $30,056 (1990 Census).

27.3% of Indian families are headed by females, with no husband present; this compares with the national figure of 16.5% (1990 Census).

[2] According to the National Center for Education Statistics data gathered from the 50 states for Fiscal Year 1991, the average per-pupil expenditure was $4,970. The NCES survey did not include the BIA school system. But according to data supplied by BIA education officials to the Congressional Research Services, the comparable per-student amount for instructional purposes was $3,760 in Fiscal Year 1991. BIA schools have extra financial needs due to their remote locations, the small size of most of the schools, and the special needs of their students.

The amount spent on transportation in BIA schools is $1.50 per mile, which compares to the national average of $2.34 per mile (1993 Bus Fleet magazine).

The backlog of needed construction for BIA schools is $500 million (Office of Construction Management).

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colleges.[3] Tribal college facilities are generally hodgepodges of trailers and converted buildings that most colleges would not consider appropriate. And while the tribal colleges are serving students who probably would not have pursued higher education had it not been for their presence, and have enviable success records concerning college completion and job attainment[4] they are not able to reach anywhere near their potential due to lack of adequate funding. As mentioned above, we ask that the Administration issue the Executive Order requested by the tribal colleges, so that they may more easily access various federal agency monies.

We need to keep in mind that the demographics of the Indian and Alaska Native population is very different than the national norm. While student populations for most schools have declined or stabilized, the Indian population is young and fast-growing[5]. The Administration needs to submit budgets which are worthy of the school system for which it is directly responsible, including construction of school facilities. Budget cut proposals should, at minimum, exclude Indian education and health programs, as they provide direct basic services to Indian and Alaska Native people.

Cultural and Other Factors Impact Education. Of paramount importance to Indian and Alaska Native people is that education be culturally appropriate and that it reflect our history. Our survival as Native peoples is inexorably linked to preservation of our languages. One of the National Indian Education Goals established by the Department of Education's Indian Nations At Risk Task Force is that by the year 2000 all schools will offer Native students the opportunity to maintain and develop their tribal languages[6]. Our survival as Native peoples is also dependent upon our ability to freely

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[3] Tribal colleges receive $2,974 per FTE, in comparison with $6,997 per FTE in public community colleges (Comparative Financial Statistics for Public Community and Junior Colleges, 1991, National Association of College and University Business Officers).

[4] A 1993 survey by the American Indian Higher Education Consortium of six of its member institutions showed that 85% of tribal college graduates were employed, in stark contrast to the high unemployment rate on Indian reservations. That same survey showed that 32% of students completing two-year tribal college courses went on to 4-year higher education institutions. (Some tribal colleges are 4-year institutions, and one offers a Masters degree.)

[5] The Indian population growth from 1980 to 1990 was 37.9%, which compares to the White rate of 6% and the national rate of 9.8% (1990 Census).
39% of Indian people are under 20 years of age, which compares with 29% of the national population. The median age of Indian people is 26, which compares to the national median age of 33 (1990 Census).

[6] There are 170 Native languages spoken in the U.S. (1990 Census), with a preponderance of them threatened with extinction.

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exercise our religions, and we strongly support enactment into law this year of comprehensive amendments to the American Indian Religious Freedom Act toward this end.

As proposals are put forward related to health, substance abuse, counselling, family preservation, social services and other matters which have an impact on a child's ability to become educated, we ask that you keep in mind the rightful role of tribes and the BIA school system. The Administration's health care reform bill, for instance, proposes school-based health clinics, but as currently written, BIA schools would not be eligible for assistance for such clinics. In the area of social services, we ask your active support for pending legislation (H.R. 4162) which would provide a direct allocation of funding to tribal governments under the Title XX Social Services Block Grant. State and territorial governments, but not tribal governments, receive this funding, most of which is used for child welfare services.

We reiterate our desire to have a closer partnership with the Clinton Administration on education matters, and know we we each have much to offer the other. We should seize the opportunity provided by the high profile which education currently occupies on the nation's agenda to help Indian and Alaska Native people address their own education needs.

ATTACHMENT B

SUMMARY OF NIEA RECOMMENDATIONS ON ESEA MADE IN THE MAY 4, 1994 TESTIMONY BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

• Request an Administration listening conference on Indian education.

Bureau of Indian Affairs Education Law.

• Support provisions in H.R. 6 regarding study of a needs-based budget for BIA schools.

• Support provision in H.R. 6 regarding the submission by the NCES of a BIA education budget.

• Support provision in H.R 6 regarding establishment of a division of budget analysis in OIEP.

• Support provision in H. R. 6 which would deem BIA funds to be considered as non-federal funds for purposes of BIA schools matching requirements.

• Support addition of a .25 weight for the ISEF formula for Native language programs.

• Support designation of personnel in OIEP to coordinate adult education services.

Indian Education Act

• Oppose provision in H.R. 6 regarding state review of Indian Education Act applications.

• Support provision in H.R. 6 which maintains the fellowship program as a scholarship program for students, as opposed to an institution-based program.

• Request that the administration of the fellowship program be contracted out.

• Request that the ITAC centers be reauthorized.

• Request authority for tribes to apply for and administer IEA formula grant funds when LEAs do not apply for them.

• Request new grant program for tribes and tribal organizations to develop education codes, to coordinate education programs, to provide support services to schools, and to provide child-find screening services for pre-school aged children.

• Require parent committee approval for the use of IEA funds for schoolwide projects, require that the school have a specified percentage of Indian students before IEA funds could be used for a schoolwide project, and require that the schoolwide project be consistent with the purposes of the IEA.

• Support the provisions in H.R. 6 which require service payback for IEA fellowships and EPD funding.

• Support the comprehensive Indian education plan required of IEA applications in H.R. 6, but ask that it be amended to allow utilization of tribal school reform, academic and assessment standards.

Impact Aid

• Support funding distribution formula in H.R. 6.

• Request reinstatement of tribal grievance procedure (H.R. 6 would eliminate it.)

• Request authorization for school construction and the development of a systemic school construction program for public schools on Indian reservations.

Bilingual Education.

• Support the provision in H.R. 6 which would provide preference for applications which promote proficiency in English and another language.

• Support provision in H.R. 6 which would authorize grants for the development, publication and dissemination of instructional materials for Native American, Native Hawaiian and other languages for which instructional materials are not readily available.

• Support provision in H. R. 6 which would require that readers of grant applications have expertise in Native languages.

• Support provision in H.R. 6 which would broaden eligibility for grants by including tribally-sanctioned entities which serve education purposes.

• Support the exemption in H.R. 6 for Indian applications from the requirement that there be SEA review of bilingual applications.

• Support the provisions in the Findings section regarding federal responsibility for provision of education for Native people and the statement acknowledging the important role of a child's native language in the learning process.

• Propose that Indian/Alaska Native languages have the same status with regard to the Bilingual program as does Spanish in Puerto Rico.

Technical Assistance

• In addition to supporting the reauthorization in the IEA of the existing 6 Indian education technical assistance centers, we support retention of the provisions in H.R. 6 which would make the following requirements of the proposed new comprehensive technical assistance centers:

-- preferences that service be provided to tribes and BIA schools.

-- preference for funding applications for comprehensive centers serving Indian students to consortia that include Indian education agencies and organizations.

-- the requirement that the comprehensive centers maintain staff expertise in meeting the needs of Indian, Alaska Native, and Native Hawaiian children.

-- the provision that at least as many resources now being devoted to the Indian education technical assistance centers be provided in the new comprehensive centers.

-- the provision that the BIA be considered a state for purposes of serving BIA-system schools through the National Diffusion Network.

Local Educational Agency Definition

• Support amending the definition of LEA to ensure that BIA schools are considered LEAs for all federal funding purposes, except where the statute makes express provision for their funding. (H.R. 6 would consider BIA schools as LEAs for purposes of Department of Education discretionary grant programs only.)

Chapter 1

• Support the provision in H.R. 6 which maintains the 1% allocation of Chapter 1 funds for BIA schools and Territories (The Administration has proposed to lower this to an unknown amount of (up to 8%).)

• Request eligibility for BIA schools for Chapter 1 Concentration Grants.

• Support provisions in H.R. 6 which would require more Chapter 1 emphasis on serving children whose Native language is not English.

Gifted and Talented (Javits Act)

• Request authorization for a pre-school gifted and talented demonstration project.

• Request a feasibility study for an Indian Gifted and Talented Academy.

NATIONAL INDIAN EDUCATION ASSOCIATION

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HAND DELIVERY

May 9, 1994

The Honorable Daniel K. Inouye, Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

re: Indian Technical Assistance Centers

Dear Chairman Inouye:

This letter is being submitted in response to your request made at the May 4 hearing before your Committee for more information about the purpose and need for the six regional Indian Technical Assistance Centers (ITACs). That request was made in response to the National Indian Education Association's testimony that the ITACs should be maintained as free-standing centers.

Our view is that the Indian education centers should be retained because they provide, through Indian and Alaska Native organizations, hands-on assistance to Indian schools and organizations, tribes, parent committees, tribal colleges and other institutions of higher education. This type of assistance is not envisioned in the technical assistance titles in the pending elementary and secondary education bills. S. 1513 would provide no services to Indian tribes, Indian organizations, parent committees or tribal colleges. S. 1513 certainly does not envision a technical assistance center staff person literally going to a school and working with teachers and administrators, something the ITACs now routinely do. *In fact, the Department of Education's Request for Proposals for the competitive bidding for the ITAC contracts states that any consultations not done on-site (e.g. through telephone) must be justified on the grounds that an on-site visit was not necessary.* We would, however, support statutory or other requirements that the Indian centers and the proposed new national centers coordinate and work cooperatively.

We ask that this letter be made part of the official hearing record.

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Statutory Authority. The ITACs are authorized under Section 5321 (e) of the Indian Education Act of 1988 (P.L. 100-297) as amended by P.L. 100-427 (102 stat. 1603). They are funded through the Department of Education's Office of Indian Education, and their appropriation is in the Interior and Related Agencies Appropriations Act.

Statutory Mandate. The statutory mandate of the ITACs is to:

- provide information to LEAs, including BIA schools, Indian tribes, Indian organizations, and parent committees, with regard to strategies and techniques in evaluation that determine program effectiveness and objective assessment of student educational needs.

- provide technical assistance, upon request, to LEAs including BIA schools, Indian tribes, Indian organizations, Indian institutions and parent committees in program planning, development, management, implementation, and evaluation through materials and personnel resources; and

- coordinate, develop and disseminate information, upon request, to the parties described above, concerning all Federal education programs affecting the education of Indian children and adults, including information on successful practices, models and projects designed to meet the special educational needs of Indian children and information on Indian adult education.

ITAC Locations. Listed below are the locations of the ITAC centers, and other information about them.

ITAC Region	Contractor	# Grantees	# Students	FY1993 Funding
Center I	ORBIS Associates Washington, DC	198	57,295	$ 447,000
Center II	United Tribes Tech College, Bismark, ND	230	51,223	$ 486,000
Center III	Gonzaga University Spokane, WA	184	49,800	$ 406,000
Center IV	NITAC Tempe, AZ	306	119,530	$ 545,000
Center V	Amer Ind Research & Dev., Norman, OK	345	91,000	$ 510,000
Center VI	Cook Inlet Tribal Cncl Anchorage, AK	47	25,401	$ 355,000
6 Centers	6 AWARDS	1,265	396,760	$2,349,000

These are Fiscal Year 1993 statistics from the National Advisory Council on Indian Education.

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Work of the ITACs. The ITACs were established over 12 years ago in response to needs demonstrated by education programs serving American Indian and Alaska Native people. The purpose of the Centers has been and continues to be provision of training and technical assistance to schools, Tribes, and Indian organizations serving Native students. the ITACs have been able to help schools and educational institutions in areas including:

- focussing on a holistic approach toward addressing the needs of Native students, including holistic counseling approaches;

- development of culturally-based instructional materials for teaching and tutoring;

- employment of manipulative math and other research-based learning techniques in classroom instruction and tutoring;

- development of year-long courses of supplemental study using cultural curriculum resources developed with the ITACs;

- development of partnerships among Indian parents, parent communities and community members to actively involve them in education;

- supporting efforts of state and tribal departments of education to address Native education concerns;

- planning IEA projects and development of evaluation components for them;

Following the intent of the Indian Education Act, the six ITACs serve Indian people 'where they reside.' Accordingly, they are specifically situated to be accessible and responsive to the remote American Indian and Alaska Native populations. They are unique in this regard. The rural isolation of many Tribes, Native communities and schools serving Native students requires a regionalized approach or technical assistance that is focused exclusively on the broad spectrum of Native education programs. The establishment of Megacenters is not likely to take this into consideration.

The six ITACs are the only federal technical assistance centers to offer assistance to grantees and parent committees in the complex task of designing programs and completing comprehensive application requirements. Because funds go directly to local school districts without any intermediary agency oversight or assistance, schools rely heavily on the ITACs for operation and project design information. This task is unique to these centers and outside the scope of the Megacenter concept.

It is important to point out that the ITAC staff members address needs beyond those of the Indian Education Act. The

Centers exercise Indian preference in hiring for positions and staff members are required to have knowledge and proficiency in many areas of education programming which affect Indian people on the federal, state, tribal and local level. Since Indian parent committee members frequently serve on Johnson O'Malley committees as well as IEA committees, expertise is required to assist them. Likewise, IEA project managers often are managing JOM programs and IEA programs.

Unlike other Department of Education programs, i.e. Chapter One and Bilingual Education. IEA projects are locally-based, need-driven programs which are designed at the local level and not prescribed in federal regulatory authority. Activities are locally designed as are objectives and evaluation plans. There is no singular path to follow, no prescribed curricula, no singular measurement of success. This unique flexibility allows for creation, innovation and coordination of resources beyond the scope of other federal programs.

Again, thank you for your interest in the work of the Indian Technical Assistance Centers. Please let us know if we can provide any further information regarding the ITACs.

Enclosed is a newsletter of the Center 1 Indian Technical Assistance Center.

Sincerely,

Phil Baird

Phil Baird
President

Enclosure

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

Statement by

Robert K. Chiago
Executive Director

on

Fiscal Year 1995 Request for
the National Advisory Council on Indian Education

May 4, 1994

Mr. Chairman and Members of the Committee:

I wish to express appreciation for being invited to appear before this distinguished committee to present testimony pertaining to the reauthorization of the Indian Education Act and the reauthorization of other provisions of the Elementary and Secondary Education Act of 1965 which may affect Indian children and adults.

Ever since the last reauthorization of the Elementary and Secondary Education Act of 1965, the National Advisory Council on Indian Education (NACIE) has been making recommendations which are pertinent to the current reauthorization of the act. The majority of these reauthorization recommendations are contained in our 19th Annual Report to the Congress. Copies of this report were distributed to every member of Congress prior to the end of the last fiscal year. We find that a few of our recommendations are reflected in the H.R. 6 version of the Indian Education Act. One such recommendation is the Comprehensive Program Required under Section 6104(b) which requires that applications submitted under this section include a program plan for meeting the needs of Indian children in the local educational agency, including language and cultural needs.

Other NACIE recommendations incorporated into H.R.6 include: removing the requirement that NACIE review discretionary grant applications; the inclusion of a service obligation or payback requirement for the Indian fellowship and Professional Development programs; and the recommendation to remove "other organized group" from the definition of "Indian."

Rather than review all of the reauthorization recommendations made in our previous annual reports to the Congress, I am herein reacting to the H.R. 6 version of the Indian Education Act and to its other provisions which may have an effect on the education of American Indians and Alaska Natives.

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The National Advisory Council on Indian Education recommends a modification to the stated purpose of the Indian Education Act in Section 6002. We recommend that the statement of purpose include provisions for the physical and emotional education related needs of American Indians and Alaska Natives to be written as follows:

Sec. 6002. PURPOSE.

(a) Purpose - It is the purpose of this title to support the efforts of local educational agencies, Indian tribes and organizations, post secondary institutions, and other entities to meet the physical, emotional, special education and culturally related academic needs of American Indians and Alaska Natives, so that they can achieve to the same challenging, State performance standards expected of all students.

Specific provisions for meeting the physical and emotional needs of American Indians and Alaska Natives as well as their special education and culturally related educational needs would provide for a more holistic approach to learning. It is our understanding that unless specifically mentioned in the law, educational programs which provide some focus on the physical and emotional educational needs of Indian students may not be allowed.

NACIE is opposed to the amendments made in Section 6102 which change from 10 to 20 the local educational agency eligibility requirement for the minimum number of enrolled Indian children needed for a formula grant program. Likewise the Council is opposed to increasing a local educational agency's total minimum Indian enrollment from 10 to 25 percent for a program under this section. This would disqualify 13 local education agencies currently receiving grants. NACIE is also opposed to the establishment of a minimum grant amount. The establishment of a minimum grant amount would eliminate 41 projects currently operating under the $4,000 threshold or require that they become part of a consortium of local education agencies. The proposal to establish a minimum threshold gives the impression that it is being done for the administrative convenience of the Office of Indian Education and not to meet the educational needs of American Indian and Alaska Native students.

A subsection should be added to Section 6102 to allow Indian tribes to be eligible to apply for Part A Grants if the local education agency does not intend to do so.

NACIE supports Section 6104(b) with some slight modifications. Subsection (B)(3) should be amended to include ***"and funds"*** after the word "**programs**". Section 6104(b)(2)(B)(3) would be written as follows:

explains how Federal, State, and local programs and funds, especially under Title I of this Act, will meet the needs of such students.

Section 6104(d) should be amended to only require that the application be submitted to the State educational agency. It should not require that comments on the application from the State education agency be included with the application which the local educational agency submits to

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the Secretary. Such a requirement could delay the application, and force an unnecessary burden on the state. The proposed subsection (2) should be eliminated and replaced with the following:

> ***If at least 50 percent of the Indian students served by the local educational agency are members of a single tribe, or are members of a consortium of tribes, that the local educational agency shall provide an opportunity for the tribe, or from consortium of tribes to comment on the application before it is submitted to the Secretary.***

Such a provision would provide for better program coordination since many Indian tribes operate educational programs for the same Indian students served by the local education agency. This would also facilitate the idea of partnerships, and the involvement of Indian tribes as partners.

Any reference made to **"other organized group"** should be deleted from the Indian Education Act. While it is deleted from the definition of Indian in section 6601(4)(A) it is still referred to in sections 6106(b)(1)(A); 6106(b)(1)(B); 6106 (b)(2); 6106(c)(2); and 6106(e). Any reference made to the child's parents or grandparents for purposes of program eligibility should also be deleted from the act. Section 6106 contains such references. It is NACIE's position that a prerequisite for being an Indian is to be a member of an Indian tribe, and that only self-governing entities, namely Indian tribes and bands; Eskimo, Aleut, or other Alaska Native Villages, bands, or tribes can define their membership, and that only members of these self-governing entities should be eligible for services under the Indian Education Act. The definition proposed in H.R. 6 in Section 6601 is much too broad. It erodes the powers of self-governing entities to determine their own membership by including in the definition of "Indian", ***a descendent, in the first or second degree, or an individual described in subparagraph (A)***. These individuals may or may not be considered members by the tribe in question and only the tribe should have the authority to make this determination.

We are also concerned about the federal acceptance of unrestricted state recognition of Indian tribes for services under federal programs such as the Indian Education Act. NACIE does not question the existence of legitimate state recognized tribes or bands, many of which have a historical relationship with states. Their members may retain some semblance of tribal identity and integrity, including language and culture. Unrestricted state recognition, however, could create unexplainable distortions to the definition of Indian. To exemplify this predicament consider that in 1990, the Census counted 4,987 Indians in the state of Alabama between the ages of 5 and 18 while 11,385 Indian students were counted for purposes of the Indian Education Act Subpart 1 program during the same year. These students generated $1.3 million for public schools in Alabama during that year, but to say that these funds were used to educate only American Indian and Alaska Native students is questionable.

As you are aware, the Census Department's method for determining ethnicity is self-identification which would seem to be the most liberal method for defining who is Indian. State recognition of "tribes" can be accomplished in several ways such as by executive order, incorporation, and through the passage of state laws. We recommend that the federal government establish minimum standards or at least the passage of a state law for the federal acceptance of state recognized tribes.

We are pleased and relieved that the Indian Fellowship Program is again included in H.R. 6. However, to our dismay the Department of Education has decided to select high scoring Indian Fellowship applicants from 1993 for awards in 1994. This decision was made by the Department without consultation with our Council. We object to this decision. In addition, we do not believe that the method being used by the Department of Education to select applicants for awards is consistent with the Code of Federal Regulations (CFR). In particular, 34 CFR 263.12 which specifies the method by which fellowship applications are to be evaluated. Since 34 CFR 263.8 requires that the applicant submit his or her most current transcripts, and since the most current transcripts of last year's applicants may have changed, it would appear that the "official academic record" would also change. It is our view that any changes to the official academic record would require a re-evaluation of all applications being considered for purposes of proper scoring and ranking. The Department does not agree that a new competition of applications is necessary as does this Council. It also appears that the decision to not solicit new applications this year was in anticipation of new legislation being passed that eliminated the Indian fellowship program altogether. No new awards in 1994 would have phased out any continuation applications one year earlier.

While we support much of Parts B and C of the Indian Education Act in H.R. 6, we do not support the elimination of the Indian Technical Assistance Centers (ITACs). We view the elimination of the Indian Technical Assistance Centers as the possible beginning of a trend to eliminate all Indian specific programs under the guise that service integration would result in better and more comprehensive services for all. Section 3806 of H.R. 6 creates categorical education centers while it eliminates Indian Technical Assistance Centers. Part of the reason the Congress passed the Indian Education Act was to remedy the consequences of past Federal policies toward Indian nations. Until these consequences are remedied, the need for Indian specific programs, including Indian Technical Assistance Centers, should remain in order to provide assurances that Indians are receiving equitable federal educational services.

When the Department of Education was created, the position of Commissioner of Education was eliminated and in the minds of many, elevated to the level of Secretary of Education. Since that time, NACIE has been recommending that the Director of the Office of Indian Education (OIE) report directly to the Secretary of Education since the Deputy Commissioner of Indian Education had previously reported to the Commissioner of Education. NACIE again recommends that the position of OIE Director be elevated to a level commensurate with that of Assistant Secretary or at least to a level equal in stature as is the position of Director of the Office of Bilingual Education and Minority Language Affairs (OBEMLA).

Currently, the Director of the Office of Indian Education is a career appointee in the Senior Executive Service (SES). Recruitment and selection for the OIE director must be in accordance with the Code of Federal Regulations governing the selection of members in the career Senior Executive Service (SES). During recent searches, Personnel Management Services has extended an invitation to the Chairman of NACIE to serve on the three person Executive Resources Board (ERB). The other two members of the ERB are already members of the career SES. NACIE's primary involvement in the process has been to identify three nominees from the list of candidates referred to it by the ERB, and submit a rank ordered list for the position to the Secretary of Education. The Director is not in the normal sense a political appointee. Due to NACIE's unique involvement in the search process, the OIE Director is not appointed in the same manner as would be other members of the career Senior Executive Service. This creates a dilemma of sorts. To summarize, the Director is recruited by the Department of Education, nominated by NACIE, appointed by the Secretary of Education, and reports to the Assistant Secretary for Elementary and Secondary Education. Through all of this, the OIE Director is a member of the career Senior Executive Service. This process has been confusing, is most always delayed, and does not make sense /It would be better if it were all political in nature, in which case NACIE would be responsible for recruitment and nomination, with the Director being appointed by and reporting to the Secretary of Education. If it is not to be a political position, then it should be exclusively non-political and a career SES position only. This means that NACIE should not be involved in the process at all. A review of the tenure of past OIE Directors clearly shows that when the position was political (which was when the position was known as the Deputy Commissioner of the Office of Indian Education in the old Office of Education) it was held for a longer period of time by politically appointed Directors than it was by acting directors. Since it became a career SES position, acting directors have held the position longer than permanent directors.

The responsibilities of the OIE Director are at least equal to those of the Director of OBEMLA. In addition to being responsible for administering the Indian Education Act and developing policies in the Office of Elementary and Secondary Education, the OIE Director has intra-departmental responsibilities as indicated by Sections 6501(b)(2)(C) and (D) respectively as follows:

> ***coordinate the development of policy and practice for all programs in the Department relating to Indian persons;***
>
> ***assist the Assistant Secretary of the Office of Educational Research and Improvement in identifying research priorities related to the education of Indian persons;***

An alternative to elevating the position of OIE Director would be to reassign these intra-departmental responsibilities to the Assistant Secretary for Elementary and Secondary Education. This would allow for responsibility to be commensurate with authority.

The National Advisory Council on Indian Education was created by the Congress of the United States under the Indian Education Act (Public Law 92-318), on June 23, 1972. The Indian Education Act has been reauthorized five times with the last such action in 1988, under Public Law 100-297. The Act is currently undergoing it's sixth reauthorization. Section 6502 of H.R. 6 will drastically reduce the duties of NACIE. The following comparison shows the Council's current seven mandated functions and the proposed functions under H.R.6:

COMPARISON OF NACIE MANDATES, PUBLIC LAW 100-297 and H.R. 6

Public Law 100-297	H.R.6
1. Advises the Secretary of Education with respect to the administration (including the development of regulations and administrative practices and policies) of any program in which Indian children or adults participate or from which they can benefit, and with respect to adequate funding of such programs and to include advice to the Secretary of Education regarding the meaning of the term "Indian" as set forth in section 5351(4) of the Indian Education Act of 1988;	1. Advise the Secretary on the funding and administration, including the development of regulations and of administrative policies and practices, of any program, including programs under this title, for which the Secretary is responsible and in which Indian children or adults participate or from which they can benefit;
2. Reviews applications for assistance under the Indian Education Act of 1988, and makes recommendations to the Secretary with respect to their approval;	
3. Evaluates programs and projects carried out under any program of the Department of Education in which Indian children or adults can participate or from which they can benefit, and disseminates the results of such evaluations;	
4. Provides technical assistance to local education agencies and to Indian educational agencies, institutions, and organizations to assist them in improving the education of Indian children;	
5. Assists the Secretary in developing criteria and regulations for the administration and evaluation of grants made under the Indian Education Act of 1988;	
6. Submits to the Secretary a list of nominees for the position of the Director of the Office of Indian Education whenever a vacancy occurs, from which the Secretary makes his appointment in accordance with Section 5341(b)(1) of the Indian Education Act of 1988;	2. Make recommendations to the Secretary for filling the Director's position whenever a vacancy occurs in such position; and
7. Submits to the Congress no later than June 30 of each year a report on its activities, which shall include any recommendations it may deem necessary for the improvement of Federal education programs in which Indian children and adults participate, or from which they can benefit, and a statement of the Council's recommendations to the Secretary with respect to the funding of any such programs. . .	3. Submit to the Congress by June 30 of each year, a report on its activities, which shall include-- (A) Any recommendations it finds appropriate for the improvement of Federal education programs in which Indian children or adults participate, or from which they can benefit; and (B) Its recommendations with respect to the funding of any such programs.

The language in H.R. 6 would reduce the number of NACIE's duties from seven to three. The remaining duties include providing advice to the Secretary, making recommendations to the Secretary for filling the position of Director of the Office of Indian Education, and submitting an annual report to the Congress. We agree with and support the elimination of the duty to review discretionary applications for assistance under the Indian Education Act. NACIE should, however, review federal contract specifications and make recommendations to the appropriate Secretary with respect to their content when such contracts have a direct impact on the education of Indians. The provision requiring the Secretary of Education to select the OIE Director from a list of NACIE nominees would be eliminated as well. Whether or not it should be reinstated would be contingent on whether the position of OIE Director is to be political or career. We do not agree with the elimination of those other duties targeted for elimination in H.R. 6. In fact, we recommend that NACIE's responsibilities be expanded to provide advice to the Secretary of Interior as well as to the Secretary of Education. We also recommend that NACIE serve as a data collection center for all federal Indian education programs.

At this time, I would like to make some comments on other provisions of H.R. 6. For purposes of better coordination of programs, it is recommended that the local education agency be considered an eligible school attendance area for Indian students under Section 1113 of H.R. 6.

We recommend that the tribal complaint procedure which is based on the special relationship between Indian nations and the United States be reinserted into the law. This should be reinserted as a subsection of Section 8005. The complaint procedures would be written as follows:

> ***any tribe, or its designee, which has students in attendance at a local education agency may, in its discretion and without regard to the requirements of any other provision of the law, file a written complaint with the Secretary regarding any action of a local educational agency taken pursuant to, or relevant to, the requirements of subparagraph (B) of this paragraph.***
>
> ***Within ten working days from receipt of the complaint, the Secretary shall -***
>
> ***designate a time and place for a hearing into the matters relating to the complaint at a location in close proximity to the local educational agency involved, or, if the Secretary determines that there is good cause, at some other location convenient to both the tribe, or its designee, and the local educational agency;***
>
> ***designate a hearing examiner to conduct the hearing; and notify the affected tribe or tribes and the local educational agency involved of the time, place, and nature of the hearing and send copies of the complaint to the local educational agency and the affected tribe or tribes.***

The hearing shall be held within thirty days of the designation of a hearing examiner and shall be open to the public. A record of the proceedings shall be established and maintained.

The complaining tribe, or its designee, and the local educational agency shall be entitled to present evidence on matters relevant to the complaint and to make recommendations concerning the appropriate remedial actions. Each party to the hearing shall bear only its own costs in the proceeding.

Within thirty days of the completion of the hearing, the hearing examiner shall, on the basis of the record, maker written findings of fact and recommendations concerning appropriate remedial actions (if any) which should be taken. The hearing examiner's findings and recommendations, along with the hearing record, shall be forwarded to the Secretary.

Within thirty days of his receipt of the findings, recommendations, and record, the Secretary shall, on the basis of the record, make written determination of the appropriate remedial action, if any, to be taken by the local education agency, the schedule for completion of the remedial action, and the reasons for his decision.

Upon completion of his final determination, the Secretary shall provide the complaining tribe, or its designee, and the local educational agency with copies of the hearing record, the hearing examiner's findings and recommendations, and the Secretary's final determination. The final determination of the Secretary shall be subject to judicial review.

In all actions under this subparagraph, the Secretary shall have discretion to consolidate complaints involving the same tribe or local educational agency.

If the local educational agency rejects the determination of the Secretary, or if the remedy required is not undertaken within the time established, and the Secretary determines that an extension of time established will not effectively encourage the remedy required, the Secretary shall withhold payment of all moneys to which such local agency is entitled under section 3(d)(2)(D) until such time as the remedy required is undertaken, except where the complaining tribe or its designee formally requests that such funds be released to the local educational agency: Provided, That the Secretary may not withhold such moneys during the course of the school year if he determines that it would substantially disrupt the educational programs of the local educational agency.

If the local educational agency rejects the determination of the Secretary and a tribe exercises the option under section 1101(d) of the Education Amendments of 1978, to have education services provided either directly by the Bureau of Indian Affairs or by *contract with that Agency, any Indian students affiliated with that tribe who wish to remain in attendance at the local educational agency against whom the complaint which let to the tribal action (under such subsection (d) was lodged may be counted with respect to that local educational agency for purposes of receiving funds under section 3(d)(2)(D) of this Act. In such event, funds under such section shall not be withheld pursuant to subparagraph (D) and no further complaints with respect to such students may be filed under subparagraph (C)(i).*

Section 12105 creates a National Commission on Rural Education which is to be composed of 12 members. The purpose of the commission is to conduct a full and complete study on the State of rural education in America. Since the majority of educational programs providing services to Indians are located in rural parts of America, there should be some consideration provided to the appointment of Indians to the commission, and a requirement that Indian education be a focus of the study. In addition, a provision should be included in this section that requires that school facilities be studied.

In closing, I thank you for your continued attention to the educational needs of American Indians and Alaska Natives. I would now be happy to answer any questions the committee may have.

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

Biographical Sketch

NAME	Robert K. Chiago
POSITION	Executive Director of the National Advisory Council on Indian Education
EDUCATION	Bachelor's Degree in Education, Arizona State University, 1965 Masters Degree in Guidance and Counseling, Northern Illinois University, 1970 Doctoral study in Educational Administration, University of Utah, 1973 - 1975
EXPERIENCE	
1991 - present	Executive Director of the National Advisory Council on Indian Education
1988 - 1991	Director of the Department of Education, Salt River Pima-Maricopa Indian Community, Scottsdale, Arizona
1987 - 1988	Deputy Assistant Director, Department of Economic Security, State of Arizona, Phoenix, Arizona
1986 - 1987	Special Assistant to the Chairman, Navajo Nation, Window Rock, Arizona
1984 - 1986	Independent Consultant - Real Estate Sales, Private Business
1980 - 1984	Director of the Indian Education Program, Ethnic Studies Program, University of Utah, Salt Lake City, Utah
1973 - 1984	Director of Native American Studies, Ethnic Studies Program & Visiting Assistant Professor of Humanities, University of Utah, Salt Lake City, Utah
1971 - 1973	Director of the Navajo Division of Education, Navajo Nation, Window Rock, Arizona
1970 - 1971	Director of the Ramah Navajo High School, Ramah Navajo School Board, Inc., Ramah, New Mexico
1965 - 1968	Officer, United States Marine Corps (Vietnam Veteran)
HONORS AND AWARDS	Honoree, Navajo Nation Salute to Indian Educators, 1992 Salt River Pima-Maricopa Indian Community Merit Pay Increase Awards, 1988 - 1991 Salt River Pima-Maricopa Indian Community Appreciation and Outstanding Contribution Award, 1991 Chief Manuelito Appreciation Award, Navajo Nation, 1986
OUTSIDE ACTIVITY	Delegate, White House Conference on Indian Education Member, Advisory Committee to the White House Conference on Indian Education Member, U.S. Department of Veterans Affairs Advisory Committee on Native American Veterans (1988 - 1991) Member, Veterans Administration Advisory Committee on Native American Veterans (1986 - 1988) Member, National Advisory Council on Indian Education (1983 - 1991) Member, Arizona Indian Vietnam Veterans Association (1987 - present) Member, Navajo Scholarship Committee, 1986 Member, Utah State Board of Indian Affairs, (1979 - 1986) Member, Granite School District Indian Parent Advisory Committee (1972 - 1975)

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INDIAN TECHNICAL ASSISTANCE CENTERS (ITACS)

Purpose of Program: The Secretary of Education is authorized under Section 5321(e) of the Indian Education Act of 1988 (PL 100-297, as amended by PL 100-427 (102 stat 1063), to establish regional Indian Technical Assistance Centers The Centers are authorized to perform the following functions

- Provide information to local educational agencies (LEAs), including BIA schools, Indian tribes, Indian organizations and parent committees, with regard to strategies and techniques in evaluation that determine program effectiveness and objective assessment of student educational needs,
- Provide technical assistance, upon request, to local educational agencies including BIA schools, Indian tribes, Indian organizations, Indian institutions, and parent committees in program planning, development, management, implementation, and evaluation through materials and personnel resources, and
- Coordinate, develop and disseminate information, upon request, to the parties described in paragraph 2, concerning all Federal education programs affecting the education of Indian children and adults, including information on successful practices, models and projects designed to meet the special educational needs of Indian children, and information on Indian adult education

The office of Indian Education contracts out certain services to Indian Education Technical Assistance Centers During the last reauthorization of the Indian Education Act the numbers of contracts increased from five to six The duties they perform are meant to augment the effectiveness of primarily grantees under subpart 1 of the Act The list of FY 1994 contractors includes

ITACs	States Served
Indian Tech Asst. Center 1 ORBIS Associates 1411 K St, NW, Suite 700 Washington, D C 20005	AL, AR, CT, DE, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MO, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, DC
Indian Tech Asst. Center 2 United Tribes Technical College 3315 University Drive Bismarck, ND 58504	IA, KS, MN, NE, ND, SD, WI

Indian Tech Asst. Center 3 Gonzaga University School of Education 302 East Sharp Street Spokane, WA 99258-00001	CO, ID, MT, OR, UT, WA, WY
Indian Tech Asst. Center 4 NITRC 2121 S. Mill Ave, Suite 218 Tempe, AZ 85282-2195	AZ, CA, HI, NM, NV
Indian Tech Asst. Center 5 AIRD, Inc. Suite 200 2424 Springer Drive Norman, OK 73069	OK, TX
Indian Tech Asst Center 6 Cook Inlet Tribal Council, Inc 670 W. Fireweed Lane, Suite 200 Anchorage, AK 99503	AK

The Indian Education Technical Assistance Centers serve the states as listed and provide technical assistance and training at no cost to the LEA. When calling for technical assistance or training, please identify the nature and type of assistance needed so that you may be referred to the appropriate Center staff person.

Good Morning, Mr. Chairman and Members of the Committee. I appreciate the opportunity to appear before you this morning to make comment on those provisions of HR 6 which pertain to Indian Education Programs within the Bureau of Indian Affairs. The National Indian School Board Association has over 90 schools as members, including tribal contract and grant as well as BIA-operated.

Standards for the Basic Education of Indian Children. Currently, 60% of the BIA-funded schools are accredited by a Regional Accreditation agency; 80% are accredited by their respective states; and 45% are accredited by both. Only 7% of the schools follow BIA Standards because they are not state or regionally accredited. However, some of these schools are working on other forms of accreditation. With these kind of numbers, it does not appear especially useful to go through a long exercise of revising or costing out standards which are followed by so few. Not only that, but after passage of 95-561, it took over five years to get the standards regulations through the system.

Any studies should be done on applicable standards -- those that the schools are following.

Goals 2000 requires national content, performance, and opportunity to learn standards; and further require that states adhere to these national standards. Therefore, it appears that BIA would be better off to follow these national standards and supplement them with tribal culture, language, and other standards which meet the unique needs of our tribal communities.

Indian Education Functions. Central Office OIEP and the Education Line Offices need to be "re-defined" in a way that supports school improvement and reform as well as facilitate tribal control of education. Much has been accomplished in terms of local control and improvement at the school level; however, those two levels of bureaucracy are still operating very much in the "old mode". Efforts need to be re-focused in a way that promotes participation, empowerment and becoming more service-oriented. "When you flatten central administration ...without reorganizing it just grows back again. The proposed changes must coincide with other initiatives" (Education Week, 4/13/94). State Departments of Education and large school districts across the country are having to respond to this same change.

Education Line Officers should also be subject to the contract educator system, eventually phasing is the Central Office positions, as well. Those line officers that deal with contract and grant schools have a distinctly different role than those that have multiple number of BIA-operated schools within their agencies.

After these years of implementing local control, it is time to relinquish more control and decision-making to the school level. Except for those specific actions which require action by a federal official, education line officers should not have any supervisory authority over school administrators.

Administrative support services, particularly facilities management should be transferred to OIEP. We support the increase in the amount of non-competitive procurement, but would like to recommend increasing it even more to $50,000.0- and to be applicable to all sources of funds.

NISBA recently held their annual conference (April 21-23, 1994). The conference was attended by over 600 participants, including board members, administrators, parents, students, teachers, education line officers, and tribal leaders. During this conference, participants had an opportunity to respond to questions and statements. Because many of these could potentially be incorporated as part of these amendments, I include them as part of this testimony:

1. Education Line Officer (Agency/Area) positions should be subject to the Contract Educator system.
   87% Yes 13% No

2. The function of the Education Line Offices should be primarily that of:
   51.3% Providing Technical Assistance
   15.8% Regulating and Assuring Compliance
   6.3% Disseminating information
   26.6% Facilitating sharing of resources

3. BIA/OIEP will establish educational standards and requirements (proper certification, etc.) for all Educational Line Officers. (1993a conference survey of participants):
   77.4% Strongly Agree and 16.1% Agree

4. OIEP Central Office should be downsized and any savings should be transferred to schools:
86.5% Agree 13.5% Disagree

5. All OIEP Central Office positions should be subject to the Contract Educator system:
87.7% Yes 12.3% No

6. The function of the OIEP Central Office should be primarily that of:
47.7% Advocacy
8.5% Policy Development
11.6% Budget formulation
7.3% Program Management
4.9% Decision makers for local schools
18.9% None of the above

7. The BIA-operated schools are currently required to pay the DoDDs salary schedule. Should BIA-operated school boards have the authority to establish salaries for their individual schools?
73.7% Yes 25.7% No

8. Should the Congress repeal the requirement that BIA-operated schools pay the DoDDs salary schedule?
62.3% Yes 37.7% No

9. Should BIA-operated schools be "de-regulated_ so they can handle purchasing and personnel matters like contract and grant schools?
85.3% Yes 13.5% No

10. Should responsibility for facilities management be transferred to OIEP?
84.1% Yes 15.9% No

11. BIA/OIEP will transfer facilities management to the Education Agencies and Schools to improve facilities operations at the Schools Level (similar question asked at the 1992 conference):
83.6% Strongly Agree and 11.1% Agree

12. Would a $25,000 local procurement authority (comparable to ISEF) for

the Facilities O&M improve the O&M program?
52.3% Yes 20.8% No 25.4% Don't Know

13. Should schools be able to provide space for social services and child health clinics in the school building or on school grounds?
84.6% Yes 14.9% No

14. Where should responsibility for the education of Indian youth on reservations be placed?
36.4% Remain under the BIA
42.4% Be a free-standing quasi federal entity with an advisory committee selected by Indian tribes on reservations with schools
14.5% Transfer to DOE
6.1% Be assumed by the individual states

15. Which of the below-listed factors are the biggest hindrance to implementing change, including participation and empowerment of all stakeholders and shared governance/decision-making?
26.0% School Administrator
17.6% School Board
47.3% Teacher Attitudes
27.5% Teachers Union
32.8% Tribal Government
66.4% Bureaucratic paperwork and directives

(Percentages do no add up to 100% for questions15 because participants could cast multiple responses)

We thank you for the opportunity to make comment and are willing to provide further information if necessary.

[illegible] Program Director

ANCCSB

TESTIMONY OF
LORENA ZAH BAHE, EXECUTIVE DIRECTOR OF THE
ASSOCIATION OF NAVAJO COMMUNITY CONTROLLED SCHOOL BOARDS
REGARDING
ELEMENTARY AND SECONDARY EDUCATION PROGRAMS
AFFECTING INDIAN CHILDREN
SENATE COMMITTEE ON INDIAN AFFAIRS

May 4, 1994

Mr. Chairman and Members of the Committee:

My name is Lorena Zah Bahe. I am Executive Director of the Association of Navajo Community Controlled School Boards, an association of 13 Bureau of Indian Affairs-funded schools on the Navajo Reservation in Arizona and New Mexico which are operated by tribal school boards under contracts or grants from the BIA. My testimony today will address Title III, Part F of H.R. 6 regarding the BIA-funded school system, and will outline other changes we propose in elementary and secondary education programs which affect the BIA-funded schools.

Snapshot of BIA-funded School System. There are 184 elementary and secondary schools and dormitories in the BIA school system. All these schools are totally federally funded. They are not part of any state public school system. Enrollment today stands at nearly 45,200 students, but about 11,100 of these students receive both instructional and boarding services. Since both services are funded from the same source, it would probably be more accurate to say that an equivalent of 56,300 students are being served by this school system.

BIA schools are scattered throughout 22 states. Arizona has the most -- 54. And Arizona and New Mexico together account for 99 of the 182 schools. The Navajo Reservation (which extends into portions of Arizona, New Mexico and Utah) has more schools than any other: 67 of the 184 schools.

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Over half of the schools and dorms are operated by tribes and tribal school boards under contracts or grants from BIA. The rest of the schools and dorms are operated directly by the BIA with administrators and teachers who are federal employees.

School enrollment ranges from 12 at Promise Day School to more than 700 at Pine Ridge School; both are in South Dakota. Some schools are elementary only, some are high school only, some serve K-12, some are dormitories, only, and some are boarding schools which provide both instructional and residential services. The schools serve some 60 tribes. Almost all are in isolated reservation areas, and, as such, are often the focal point of their communities.

Enrollment in this system has been growing at a fast rate. Since SY89-90, the student population has increased by 13.5%. It was estimated several years ago that this system educates approximately 11% of the Indian children who are enrolled in school, but this statistic has not been updated recently. Most Indian children are enrolled in public schools and some attend private schools. We do not have good statistics on the percentage of Indian children of school age who are not enrolled in any school. According to the Navajo Division of Education, however, that percentage could be as high as 25% for children in the Navajo Nation.

In many areas, school and dorm facilities are in deplorable condition. More than 60 schools and dorms have applied for new construction. A few years ago, Congress demonstrated a commitment to replacing the old, outdated, unsafe buildings by increasing the appropriation for new school construction for a few years. At its highest level, the appropriation enabled up to four new construction projects to begin. Recent budget requests have not maintained this effort, however. And the FY95 BIA budget request seeks *no funding for new school construction projects*.

In addition, the backlog of facilities repair projects reaches or exceeds about $550 million, according to Interior Department estimates. It is hard to tell if this estimate is even accurate any longer, as many of the projects have been on the list for so long that the conditions may well have worsened and the costs of repair are likely far higher.

Despite all this, many schools are bursting at the seams. Even those schools that are in good condition now need or will soon need expansion assistance if they are to accommodate the growing ranks of young Indian children in their communities. There is a high birth rate in Indian country, and we need school space to accommodate them. There is also a high dropout rate among Indian students. The Education Department's Indian Nations at Risk Task Force reports that in 1980, the dropout rate for

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Indian children in 10th grade was 36%, higher than for any other ethnic group.

I point this out to illustrate what some BIA system school directors have told me: *The system depends on dropouts.* If all Indian children of school age enrolled in and stayed in school, we would not have room for them because our buildings are so crowded. And we would certainly not have the funds with which to educate them, at least not from the budget requests designed by the BIA for the past several years.

Critical Funding Problem of BIA System Schools. Secretary Babbitt has said that this federal BIA school system should be a *model school system*. Unfortunately, it is not. The tribal school boards and federal employees who operate these schools do a tremendous job, but they have always had to manage on a shoestring budget. As noted above, enrollment has increased by 13.5% in just five years. A larger student population demands funding increases *just to maintain the current level of service.* But the current level of service merely enables most schools to barely *survive*, never to *thrive*.

Unless and until the federal government sees fit to properly fund this school system, it will not be the model Secretary Babbitt and all of us believe it should be. Having assumed this educational obligation to Indian children, it is the moral duty of the United States to discharge it in a first-rate manner. Sadly, this has not yet been achieved.

What can be done to cure the chronic funding problem? Last year ANCCSB had advocated on behalf of giving this school system the status of an entitlement program. But because of our country's overall budget problems, we were unable to generate political support for converting our school system from a "discretionary" program to an "entitlements" program. Frankly, we do not believe that education of our Indian children is a "discretionary" activity. But that is apparently how the federal government views it.

We are pleased, however, that the House has included in H.R. 6 two new provisions whose objectives are to better identify the level of funding needed to properly operate this federal school system. ANCCSB supports these provisions and asks this Committee to do so, also. I will briefly describe them.

School-based budget system. H.R. 6 orders the BIA to examine whether the current weighted student unit funding method should be changed to a "school-based" funding system. This kind of a system looks at the student population to be served by a school, its particular characteristics and the program standards to be achieved and determines the cost of funding such a program.

"Dueling Budgets". H.R. 6 also directs that for three years, the National Center for Education Statistics shall prepare a proposed budget for the BIA school system and submit that recommendation directly to Congress. These budget submissions would be in addition to the budgets submitted by BIA through the Interior Department. The objective here is to enable Congress to compare a budget prepared by an objective, technical entity (NCES) with the one prepared by BIA. We believe the BIA's budget has *never* reflected the true level of funding needed to properly operate these schools.

ANCCSB hopes that the information developed through these two provisions will eventually lead to sufficient appropriations to make this school system the model that we all want it to be.

It is in our country's best interest to properly fund and run these Indian schools. We all know that every dollar spent to educate a child turns a 400-500% return in the form of a productive, self-reliant, tax-paying adult who does not have to depend upon society for such things as welfare and food stamps. This often-repeated adage is still sound advice:

**"If you think education is expensive,
try ignorance."**

Language needed to prevent diversion of funds. Recently, BIA proposed language in the appropriations act to empower it to take away funds appropriated for the BIA school system. We are outraged by this effort. This policy has no *educational* merit. It is, rather, a *budget-driven* policy. It is designed to keep the BIA-funded schools on a shoestring budget, and to thereby hold down enrollment. They recognize that if they make it difficult for a school to admit more students, the budget needed for the school system will decline. This is a direct betrayal of the education obligation the United States assumed when it started this school system.

We ask the Committee to insert language into H.R. 6 to make it clear that all funds Congress appropriates for the school system are to be made available to it without bureaucratic interference. The funding distribution system Congress enacted in 1978 was intended to remove arbitrary funding decisions by BIA bureaucrats. We need your help to assure that this sound policy continues to be the rule.

Indian Education Demographics Data. There is a severe shortage of reliable, nationwide data on the demographics of Indians of school age. The absence of a reliable, on-going data collection effort hampers effective short- and long-range planning, particularly in the BIA school system.

Let me explain how. Now that the BIA school operations budget is forward funded, the budget must be developed at least two years in advance. Since funds are distributed on the basis of the student population, accurate budgetary development requires an estimate of the *number of children* who are likely to be enrolled in these schools and dormitories. An underestimate will cause a funding shortfall.

Thus, we support the H.R. 6 provision that establishes a new Budget Analysis Division within the BIA's Office of Indian Education Programs who will have the job of gathering education demographics data on an on-going basis, and determine the amount of funding needed to support these projections.

We suggest that this provision be amended to provide that upon request of the OIEP, the National Center for Education Statistics shall provide technical assistance to the new Division. NCES is the federal government's primary education statistics gathering agency and could have valuable techniques to offer.

Chapter 1 Allocation for BIA School System. Ever since the Chapter 1 program was created in 1965, the law has provided that a full 1% of the funds appropriated for basic grants are allocated to for the BIA school system and the schools in the outlying territories. We were shocked to learn that the Administration wants to cut this allocation to "up to .8%".

We ask this Committee's assistance in restoring the BIA/territories allocation to the full 1% level. Our enrollment is ever increasing -- 13.5% in the past 5 years. *All children* in the BIA system are considered Chapter 1-eligible. We do not understand why the needs of these children are not by the Administration, and why it proposes to be so stingy with these schools.

H.R. 6 restores the BIA/territories allocation to the full 1% level, and we hope you will encourage the Senate Labor & Human Resources Committee to do likewise.

Administrative Cost Grants Provision. In P.L. 100-297, this Committee proposed, and Congress adopted, a provision that requires tribally-run schools to be provided with funds for their indirect and administrative costs through the mechanism of an Administrative Cost Grant. 25 USC §2008a. We ask that the words "subject to the availability of appropriated funds" be stricken from this provision.

The basis for this request is that no such limitation appears in the companion provision in the Indian Self-Determination Act which directs that tribal contractors be supplied with indirect costs and contract support costs incurred as a result of contracting under that law.

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The BIA *must* be held accountable to supply the needed amount of funds for administrative operations at schools. Otherwise, a violation of law and transgression of long-standing federal policy occur. The Administrative Cost Grant provision states:

> "Amounts appropriated to fund the grants provided under this section shall be in addition to, and shall not reduce, the amounts appropriated for the program being administered by the contract schools." 25 USC §2008a(a)(2).

When insufficient funds are requested (and therefore insufficient funds are appropriated) for AC Grants, schools have no choice but to use their program funds to help make up the shortage. This violates the statutory policy that the AC Grants shall not result in a program funds reduction.

Shortchanging the AC Grant obligation also violates the firm federal policy of encouraging exercise of self-determination rights. These rights are "chilled" when the BIA is unwilling or unable to provide school contractors and grantees with the requisite funds for the costs they incur in the exercise of those rights.

"Match" Requirement for BIA System Schools. ANCCSB supports the H.R. 6 provision that declares funds received from the BIA to be "non-federal" funds for purposes of meeting any federal grant match requirement. ANCCSB has long advocated such a provision. Many federal grant programs require the applicant to supply a "match" in the form of funds or in-kind contributions from non-federal sources. BIA system schools are placed at a competitive disadvantage for these grants because *all* of their funding comes from federal sources. We hope the Committee will retain this H.R. 6 provision.

Include BIA System Schools in Definition of "Local Educational Agency". We ask the Committee to help BIA-funded schools achieve the same status as public schools with regard to eligibility for federal education grant programs. In order to achieve this, we seek an amendment to include BIA schools in the definition of "local educational agency".

In H.R. 6, the House took a step foward but did not grant full LEA status to BIA-funded schools. We ask the Senate to finish the job.

Most federal education laws make the "local educational agency" the entity eligible to apply for and receive federal grant funds. The Department of Education says that the statutory definition of "LEA" does not include BIA-funded schools. Thus, these schools are not eligible for many federal grant programs

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unless Congress establishes in each and every law a separate allocation for the BIA system.

We ask, therefore, that the definition of LEA be amended to include BIA-funded schools in laws for which coverage has not already been separately provided. (We only seek equal accessibility, not double eligibility.) Thus, for programs such as basic Chapter 1 grants, where an allocation is already provided for BIA-funded schools, the amendment we seek would merely maintain the status quo.

But we hope that this amendment will finally make BIA schools eligible for Chapter 1 Concentration Grants. This program targets funding at schools in communities with high concentrations of poverty families. Indian reservations contain some of the most desperate pockets of poverty in the nation, yet federal schools on these reservations have always been denied eligibility for Concentration Grants. H.R. 6 proposes to distribute Chapter 1 Concentration Grants directly to LEAs (rather than to counties as in the current law). Our amendment would, therefore, make BIA schools eligible for Concentration Grants for the first time. It would also make them eligible for other federal grant programs for which LEAs are the eligible applicants or recipients.

Our amendment also provides that where an SEA is to perform a function with regard to a BIA school as LEAs, the Bureau of Indian Affairs would serve as the SEA.

If the final bill does not distribute Chapter 1 Concentration Grants directly to LEAs as proposed in H.R. 6, we seek your assistance to obtain an allocation for the BIA system to assure their eligibility.

Bilingual Education Act. Greater emphasis is needed on training of Native Indian language speakers for bilingual education positions to enhance the pool of professionals capable of teaching non-English speaking Indian children. We believe both certified teachers and teacher aids should be involved in bilingual education activities.

We would also like to see more flexibility in the number of years in which a student may participate in bilingual programs. At present, the Bilingual Education Act limits a student to three years, or, under special circumstances, to five years. On the Navajo reservation, a large percentage of children are in need of teaching assistance in Navajo for several years, particularly those older children who are encouraged to return to school after dropping out.

ANCCSB also asks the Committee to extend the special Puerto Rico provision in the Bilingual Education Act to Indian reservations. As you know, Bilingual grant funds may be used for both English and Spanish language training in Puerto Rico. (20

USC §3291(j)) This permission recognizes that Spanish is the native language of Puerto Rico and that it -- along with English -- is the common spoken language there. The identical situation exists with regard to Indian native languages on many reservations, including the Navajo Reservation. Proficiency in the languages of Indian people, as much as the language of our Puerto Rican citizens, deserve to be supported through Bilingual Education Act grants.

Additional Amendments to BIA Education Laws. ANCCSB seeks your support for some additional amendments to the BIA education laws, including the Tribally Controlled Schools Act. Some of the matters for which we seek your support are already in H.R. 6; some are technical corrections to H.R. 6 bill language; others are amendments not included in H.R. 6. ANCCSB offers to work with the Committee staff on the details of these matters. These matters are itemized on the attachment to this testimony.

Thank you Mr. Chairman and Members of the Committee.

Summary of Requested Amendments to H.R. 6

•Page 870-71: Provision requires BIA to increase counselling services for BIA-operated boarding schools and dormitories. CHANGE: Expand to include all BIA-funded boarding schools and dormitories.

•Page 872: Add language to assure that training funds are distributed pro-rata for the benefit of all school boards.

•Page 876: Endorse provision that allows both contract schools and grant schools to determine whether tuition should be charged to non-Indian students.

•Page 876-77: ANCCSB endorses the proposed study of "school based budgeting", as discussed earlier in this testimony.

•Page 878: Subsection (i) is intended to allow BIA-operated schools to carryover 15% of their funds. The fact that this provision is applicable to BIA-operated schools should be made clear. The funds provided to contract and grant schools is, pursuant to appropriations act language, already available until expended ("no year" money).

•Page 878: ANCCSB supports the allowance of tuition payments for students at the Richfield Dormitory.

•Page 878: Sec. 1128 sets out the requirements for payment of Administrative Cost Grants to contract and grant schools. ANCCSB asks that the term "subject to the availability of appropriated funds" be stricken from subsection (a)(1) of this section. This would conform the language of the Administrative Cost Grant system to the language for supplying contract support costs to contractors under the Indian Self-Determination Act. ISDA was one of the laws on which the Administrative Cost Grant provision was modeled.

•Page 894-96: ANCCSB endorses the Sec. 1129 idea of having NCES develop and directly submit BIA school budgets for three years, as discussed earlier in this testimony. TECHNICAL CORRECTION:. Page 895, line 6 requires that the first budget from NCES be submitted by January 20, 1995; we believe this should be 1996 in order to be consistent with lines 19-20 on page 894.

•Page 896-97: ANCCSB supports the need for on-going demographics data collection, as provided in Sec. 1129(d), as these data a vital to proper projections of enrollment under the forward funding cycle. ANCCSB suggests that the subsection also provide that the National Center for Education Statistics provide technical assistance to the new OIEP office, upon request.

•Page 897-98: Sec. 1130 instructs on distribution of funds appropriated to the BIA school system. We ask that the

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language in this section assure that all funds appropriated by Congress for school operations are used for that purpose.

Also, a TECHNICAL CORRECTION: The sentence on lines 20-23 should be amended to read:

> "Amounts appropriated for distribution under this section ~~may~~ shall be made available under paragraphs (2) ~~or under paragraph (3), as provided in the appropriations Act~~."

The balance of the section has been revised by the House to reflect the current forward funding practice. The existing law contains the options of advance funding and forward funding; the former is no longer needed and has been deleted by the House. The above-quoted sentence should also be updated to reflect current practice.

•Page 904: ANCCSB supports Subsection 1130(g) which allows BIA-funded schools to give to students the products or results of projects on which they have worked at the completion of the project. We believe this can aid in extending and expanding the learning experience.

•Page 904: ANCCSB supports Subsection 1130(h) which allows BIA school funds to be used to meet "match" requirements, as discussed earlier in this testimony.

•Page 943: The additional section labeled as "Section 1146 Payments" is incorrectly identified. Instead of appearing as an addition to P.L. 95-651, it should be shown as an amendment to Sec. 5208 of P.L. 100-297 (the Tribally Controlled Schools Act).

Thus, the following TECHNICAL CORRECTION IS NEEDED: On line 7, insert the following before the quotation marks:

(a) Section 5208 [25 USC §2507] is amended to read:

•Page 944: Sec. 352 amends section 5209(a) of the Tribally Controlled Schools Act to apply certain provisions of the Indian Self-Determination Act to the grants authorized under the TCSA. ANCCSB supports this provision, especially the addition of ISDA Sec. 105(f) which authorizes the Secretary of the Interior to donate surplus and excess government property to ISDA contractors.

ANCCSB-REQUESTED AMENDMENT: ANCCSB asks that this provision be amended to add mention of another ISDA provision, section 106(f). This ISDA provision requires the Secretary of the Interior to raise any questions regarding an audit within 365 days after submission of the audit. This requirement should be extended to the Tribally Controlled Schools Act.

•Page 944: TECHNICAL CORRECTION: Sec. 353 is incorrectly labeled "Payments". It should be labeled "Disputes; Appeals". The purpose of this section is to assure that the disputes and appeals provisions applicable to ISDA contracts are extended to grants issued under the Tribally Controlled Schools Act, and to Administrative Cost Grants. The present law only covers disputes and appeals regarding funding under those grants.

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THE NAVAJO AREA SCHOOL BOARD ASSOCIATION
NASBA
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EXECUTIVE BOARD OFFICERS
STANLEY YAZZIE, President
CALVIN TSOSIE, Vice-President
HARRY JACKSON, Secretary/Treasurer

TELEPHONE
[illegible]

TESTIMONY OF THE
NAVAJO AREA SCHOOL BOARD ASSOCIATION
LEONARD N. BEGAYE
EXECUTIVE DIRECTOR

BEFORE THE
UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS

MAY 4, 1994

INTRODUCTION

The Navajo Area School Board Association is for and about the education of Navajo and Indian children. As an organization, we believe that we have the unique insights and understanding of the needs of educating Indian children within the Bureau of Indian Affairs educational system. We also have a keen appreciation for the resources which Indian parents and community leaders can be in an effort to improve the education of their children.

We firmly believe that the education of Navajo children is a trust responsibility of the United States government pursuant to the Treaty of 1868 between the United States of America and the Navajo Nation. Therefore, it is the responsibility of the government to provide the necessary resources to provide the best possible education for the Navajo Nation.

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RECOMMENDATIONS ON H. R. 6

STANDARDS

The Navajo Area School Board Association fully supports the use of standards, using tribal standards where available and the bureau standards when not available. However, Section 6701 requires the use of state standards as the basis of tribal and bureau standards. This would result in at least twenty-six (26) different sets of standards in use. We suggest that this is both inappropriate and expensive and that instead the bureau should merely modify its existing standards to meet the requirements of Goals 2000-Educate America Act, rather than attempting to meet all state requirements as well. Tribes should not be bound by state or bureau standards unless they choose to do so.

We do not feel that the Secretary should become involved in assisting school boards in developing their own standards as this could become very expensive and time consuming. The Secretary should provide assistance to the tribe(s) in developing these standards and that the local school boards should be able to receive assistance from their tribe(s). However, this will be very expensive and we do not wish this assistance to adversely affect the school or agency fundings, therefore, additional funding will be needed to provide these services.

EDUCATION LINE OFFICERS

There have been attempts to modify the act and establish a single position for the education line officer or the agency superintendent for education to replace the existing agency superintendent for education and the area education programs administrator. NASBA fully supports this concept and strongly recommend that the two positions be consolidated into one type of position with all functions of both positions. However, the bill is inconsistent in applying the new term and continues to refer to agency offices rather than education offices, and this should be corrected before enactment. Also, the position should be subject to contract under 25 CFR 2011 (Section 6712 of H.R. 6) and the definition in this section amended accordingly.

STUDIES

There are too many studies required in this bill, primarily on funding methods, needs and standards. Several of the studies seem to duplicate each other and conflict and with differing time frames. We request that these be consolidated into one study in one section, so tribes may more easily monitor the progress. No actions should be required by this bill that might be changed by the results of the study until the study is completed.

NASBA believes that the National Task Force on the ISEP Funding be continued as we believe that the recommendations of using a base weighted student unit value of $3,499.00 would be adequate for the education of Navajo children. This study should show the Congress that there is an urgent need to increase the funding for ISEP to be in compliance with P. L. 95-561 so that the "cost of providing academic services which are at least equivalent to those provided by public schools in the State in which the school is located" may be met.

NASBA fully supports Section 1127 (j) of the Allotment Formula to provide the needed funds for "tuition for the out-of-state students boarding at the Richfield Dormitory in Richfield, Utah, who attend Sevier County high schools in Richfield, Utah, may be paid from the Indian School Equalization Program funds at a rate not to exceed the amount per weighted students unit for that year for instruction." While the Bureau has maintained that there is not provisions for such within any regulations, history shows that this was a common practice of the bureau in the 1950's and 60's in paying tuition for students staying in the border town dormitories and attending the local public schools, e.g., Holbrook, Winslow, Snowflake, Flagstaff and Gallup Dormitories.

EDUCATION FUNCTIONS

The time has come for the Congress to mandate that the recommendations of the Navajo Nation be implemented concerning the administration support services. Where Indian tribes have recommended the transfer of administrative support services to Education, the Bureau should be required to implement these transfers, both of personnel and funding. This should be reflected in the organizational charts and budget requests.

We have a major problem here in the Navajo Area. The Navajo Nation Council has recommended the transfer of administrative support services for the education functions to the Office of Indian Education Programs, but the Area Director has complied only partially. We want all facilities management funds for Navajo Area transferred immediately to the Education offices on Navajo, including housing funds, housing reimbursements, Major Improvement and Repair funds, Facilities Improvement and Repair funds, etc. We want all Facilities Management personnel transferred to Education immediately, including those physically located at the Area Office. Only about 5% of facilities, including housing, on Navajo are non-education facilities, allowing the Area Director to control approximately 20% of funding, all Area Facilities positions and all housing funds, including the reimbursements, is ridiculous and seriously hampers the operation of the facilities management program.

Despite, the recommendations of the Navajo Nation Council and various committees of the Navajo Nation Council, the Area Director has refused to transfer any administrative functions to education or to the agency offices. The Congress should immediately act to ensure that the Bureau shall transfer the funds, functions, and personnel to Education when such an action is requested by the tribe(s) concerned. The current wording allows the Area Directors to refuse to comply, since it requires only coordination, regardless of tribal preference. Tribal preference should be determinate in transferring the administrative support services to Education to meet the needs of the students and schools.

PROCUREMENT

Under Section 6710 of H. R. 6, it is proposed to raise the non-competitive procurement authority of school supervisors to $35,000.00. We would strongly recommend that this be raised instead to $50,000.00 and that this provision be applicable to all funds received by a school or education office, regardless of source and that the purchase of training be permitted in this section. We would like, for example, to be able to purchase our Chapter I supplies and equipment under this authority, since we are mandated by Chapter I requirements to purchase exactly what is in the project and that this Chapter I requirement has on occasion resulted in major conflicts with the procurement staff. We would also like to be able to purchase facilities supplies needed often on very short notice.

This provision of the Act as currently written has been of great benefit in assuring that critical supplies are available when school starts. We would like to improve school operations even more by expanding its scope.

PERSONNEL

As previously discussed, we would like the position of Area Education Programs Administrator and the Agency Superintendent for Education to be combined into one all inclusive position to be titled either Superintendent for Education or the Education Line Officer. We would also like this position to be subject to the contract educator personnel system, to assure tribal involvement at this level.

We feel that the need for a national level list of qualified and interviewed applicants for educational positions is no longer needed. Such a list has fallen into non-use and the Central Office routinely refers inquiries about education positions to the field. Deletion of this section would allow Central Office to devote its time to assuring that the field is operating its personnel system correctly rather than maintaining a list which is never used. The requirements for conditional appointments for applicants who have applied at both levels should also be deleted.

Currently, the Act requires that educators be notified of contract renewals at least sixty (60) days before the end of the school year. This in turn means that the school supervisors must make their recommendations to the school boards at least ninety (90) days before the end of the school year, or by February 1st in most cases. After only a little more than half a school year, a supervisor cannot necessarily make a good recommendation for renewal of contracts. We would like the date for notification of contract renewals to be thirty (30) days before the end of the school year, thus providing adequate notice to employees while allowing supervisors and school boards an extra month to review the performance ratings.

The sections on teacher and counselor pay should be modified to delete those provisions which have already been completed, such as the three year phase in of the new pay scales.

We would like to see the section prohibiting re-employment of an educator who voluntarily terminates employment to be modified to reflect that the section applies only when the school board does not approve the termination and for the prohibition to apply not only for the year in which termination occurs but for one additional year. We have had cases where employees resign late in the school year after being told their contracts were not being renewed solely to avoid having to meet state certification requirements, and immediately being hired at another school for the next school year before any action shows on the official record. The addition of a second year of non-eligibility would eliminate this practice.

We also believe that the school board should be allowed to notify the state departments of education to recommend that the teaching certification be revoked for teachers who "break" their contracts by abandoning their positions or leaving their position even when school boards refuse to release the employees from their contracts.

We also recommend that the bureau should eliminate the "status quo" system and put all educators on education contracts. This current system protects incompetent administrators and teachers thereby denying Indian children a decent education.

BUDGET PREPARATION AND SUBMISSION

We strongly support the concepts embodied in Section 6709 of the bill, which establishes a Division of Budget Analysis within the Office of Indian Education Programs. We feel that the office indeed needs its own independent budget office for preparation of budget requests as well as budget analysis and report generation. This is a definite improvement for Indian education at the local schools as well as at the Central Office level.

CONCLUSION

NASBA recommends to the Congress of the United States to require that the Bureau meets the mandates of Public Law 95-561 fully and to implement the whole law so that the concept of local control by the school boards can be fully realized and that the funding for Navajo children be adequate to meet the needs of the Navajo Nation.

The Navajo Area School Board Association appreciates the opportunity to testify before the Senate Committee on Indian Affairs and the support that the Honorable Senators of the Committee has consistently show to the children of the Navajo Nation by providing assistance to ensure that funds are allocated for the education of these children.

Thank you.

Leonard N Begaye

Leonard N. Begaye
Executive Director

TESTIMONY
FOR THE
SENATE COMMITTE ON INDIAN AFFAIRS

REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

INDIAN EDUCATION PROVISIONS

ASSOCIATION OF COMMUNITY
TRIBAL SCHOOLS INC.

DR. ROGER BORDEAUX
EXECUTIVE DIRECTOR

My name is Dr. Roger Bordeaux, representing the Association of Community Tribal Schools Inc. ACTS represents tribally controlled elementary and/or secondary schools. Our member schools have the majority of the total student population (18,000) enrolled in tribal schools. The *MISSION* of ACTS is:

> **To assist community tribal schools toward their mission of ensuring that when students complete their schools they are prepared for lifelong learning and that these students will strengthen and perpetuate traditional tribal societies.**

I would first like to discuss Title VI-Sections 6001 through 6602 of HR 6.

1. Section 6103.

Assurances must be included to guarantee the BIA will not add guidelines, etc to the administration of this program. Can these funds be put into an existing Grant. Is the Secretary of Interior-BIA-OIEP a state for purposes of this act.

2. Section 6104.

Are the BIA funded schools considered LEA's. Is the Secretary DOEd or Interior. Is reference to state plans and state education agency the BIA or state plans. Also state standards.

3. Section 6106.

What about those students not eligible for BIA but eligible for Title IV.

4. Section 6107.

Are payments to BIA funded schools done by July 1. HOW.

5. Section 6402.

Is the BIA-OIEP the state education agency.

I would now like to discuss Sections 351, 352 and 353 of Part F-Amendments to Statutes Pertaining to Indian Education - HR 6 **(I have given a committee staff person a marked up version of recommended changes to these following sections).**

Part B-Bureau of Indian Affairs Programs

Section 1121.
Section 1125. FACILITIES CONSTRUCTION

"(b) [ADD to line 5, page 863] **This report will also include carryover balances in BIA Education Construction Accounts, unobligated funds from the Distribution of Allotments and Sub-Allotments, a list of schools who have applied for new school construction and their estimated costs, and the total backlog, listed by school, in the Facilities and Improvement Repair.**

Section 1126. BUREAU OF INDIAN AFFAIRS EDUCATION FUNCTIONS

ADD to line 15 after "...personnel." **The Director of the Office will have final authority in all matters relating to any appropriations directly benefiting schools funded per Section 1127 including all Education Construction Accounts.**

Section 1127. ALLOTMENT FORMULA
Need separate finance and distribution formula. **(REFER to Attachment A)**

Section 1128. ADMINISTRATIVE COST GRANTS
Section 1129. BUDGET PREPARATION AND SUBMISSION
Section 1130. UNIFORM DIRECT FUNDING AND SUPPORT
Section 1131. POLICY FOR INDIAN CONTROL OF INDIAN EDUCATION
Section 1132. EDUCATION PERSONNEL
Section 1133. MANAGEMENT INFORMATION SYSTEM
Section 1134. BUREAU EDUCATION POLICIES
Section 1135. UNIFORM EDUCATION PROCEDURES AND PRACTICES
Section 1136. RECRUITMENT OF INDIAN EDUCATORS
Section 1137. ANNUAL REPORT
Section 1138. RIGHTS OF INDIAN STUDENTS
Section 1139. REGULATIONS
Section 1140. DEFINITIONS
Section 1141. VOLUNTARY SERVICES
Section 1142. PRORATION OF PAY
Section 1143. EXTRACURRICULAR ACTIVITIES
Section 1144. EARLY CHILDHOOD DEVELOPMENT PROGRAM
Section 1145. TRIBAL DEPARTMENTS OF EDUCATION
Section 1146. PAYMENTS (Is this for the Grants School Act)

SECTION 352. APPLICATION WITH RESPECT TO INDIAN SELF DETERMINATION AND EDUCATION ASSISTANCE ACT

Section 5204. GRANTS AUTHORIZED

ADD a NEW (a) (4) **All federal agencies may use this grant authority for any funds appropriated for services provided at a tribally controlled school.**

Section 5205. COMPOSITION OF GRANTS

ADD to (b) (4) **Funds received from these accounts may also be used to meet any facility needs identified by the tribe or tribal organization and approved by the Director in lieu of the specific purpose for which they were appropriated. All funds will be distributed to the tribe or tribal organization according to Section 5208 of this Act.**

Section 5211. Regulations

ADD the following: **The term regulations includes guidelines, procedures, directives and any other administrative rule**

SECTION 353. PAYMENTS
SECTION 354. ENDOWMENT FUNDS
SECTION 355. HIGHER EDUCATION AMENDMENTS OF 1992

I would like to discuss the attachments.

ATTACHMENT A. RATIONALE FOR A INDIAN SCHOOL EQUALIZATION REVENUE GENERATOR

ATTACHMENT B. TRIBAL ELEMENTARY AND SECONDARY EDUCATION INSTITUTES

ATTACHMENT C. OCM-REPORT OF FY 1993 CARRY OVER BALANCES

ATTACHMENT D. BIA-FY 1994 DISTRIBUTION OF ALLOTMENTS AND SUBALLOTMENTS

ATTACHMENT E. LETTER FROM JEFFREY SEIDEL, NORWEST BANKS, OUTLINING SCHOOL CONSTRUCTION FINANCING

Rdg/h
1992

RATIONALE FOR A INDIAN SCHOOL EQUALIZATION REVENUE GENERATOR (ISERG)

Since the passage of Public Law 95-561, which included authorization for the Indian School Equalization Formula, the Bureau of Indian Affairs - Office of Indian Education Programs has never requested an amount for basic school operations that was close to the actual need of the BIA funded elementary and secondary schools. After a review of the budget justifications over the last 10 years it is clear the Office of Indian Education Programs either does not have the desire to develop a budget based on need or the actual budget process does not allow them to develop a budget based on need. Either way, the schools have lost ground.

THE INDIAN SCHOOL EQUALIZATION REVENUE GENERATOR (ISERG)

This formula is based on the national public school per pupil revenue and expenditure report from the Department of Education's National Center of Educational Statistics (Dec., 1991)a. The premise is "BIA funded schools should have equal revenue as compared to public schools".

Definitions

1. National Per Pupil Revenue (NPPR) - total public school revenue divided by the total number of students served.
2. National Per Pupil Expenditure (NPPE) - total public school expenditure divided by the total number of students served.
3. Consumer Price Index (CPI) - the inflationary cost of goods and services for a given year.
4. Department of Defense Teacher Salary Increase (DODTS) - the required teacher salary increase for BIA teachers.
5. Administrative Cost Grant (ACG) - funds generated by tribal schools for administrative services based on legislated formula.
6. Total Revenue (TR) - total revenue received by BIA funded schools through the BIA.
7. Facilities Management (FM) - funds generated by BIA funded schools for facilities operation and maintenance based on individual school inventories and technologies.
8. Transportation (T) - funds generated by schools for transportation costs based on miles driven.
9. Need per weighted student unit (N/WSU) - revenue needed based on identified need through national per pupil data.
10. Federal Share of National Per Pupil Revenue (FSNPPR)

THE FORMULA

This formula would be used to project revenue needs for two years down the road. As an example, for the 1993-94 school year, you would use 1991-92 school year data.

NPPR + (NPPR X .35 X CPI X 2) + (NPPR X .65 X DODTS X 2) - (NPPR X FSNPPR) - (NPPR X ACG/TR - (NPPR X FM/TR) - (NPPR X T/TR) - N/WSU

EXAMPLE 1. REVENUE

5529 + (5529 x .35 x .03 x 2) + (5529 x .65 x .03 x 2) - (5529 x .048) -
(5529 x 16,963,786/122,053,708) -
(5529 x 15,171,745/122,053,708) -
(5529 x 6,662,700/122,053,708) -

5,529 + 116.10 + 215.63 - 265.39 - 767.98 - 687.25 - 301.33 =
5,860.73 - 2,021.36 = $ 3,839.37

EXAMPLE 2. EXPENDITURE

5096 + (5069 x .35 x .03 X 2) + (5096 x .65 x .03 x 2) -
(5,096 x .48) -
(5096 x 16,963,786,122,053,708) -
(5096 x 15,171,745/122,053,708) -
(5096 x 6,662,700/122,053,708) -
5096 + 107.01 + 198.74 - 244.06 - 708.27 -633.45 - 278.18 =
5,401.75 - 1,863.96 = $ 3,537.79

Sources used for examples.

United States public school year 1991-92 (estimate)

a. total students - 41,838,871
b. total revenue - $231,343,420,000
c. total expenditure - $213,237,595,000
b/a = $5,529
c/a = $5,096

Source: U.S. Department of Education, National Center of Educational Statistics, Dec., 1991

a. administrative cost revenue = $ 16,963,786

b. total school revenue = $ 122,053,708

c. facilities revenue = $ 15,171,745

d. transportation revenue = $ 6,662,700

Source: U.S. Department of Interior-Bureau of Indian Affairs-Office of Indian Education Programs, April, 1992 (fax 4/3/92 10:58)

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TRIBAL ELEMENTARY AND SECONDARY EDUCATION INSTITUTES

RATIONALE

The Presidential "Response to the recommendations of the Report of the White House Conference on Indian Education (1992)" stated that the Bush administration "agree that tribes should have a major role in deciding how the children in their communities are educated". The summary statement said that the president continues to emphasize the importance of close ties between Tribal governments and the Federal government.

1. The Report of the White House Conference On Indian Education (U.S. Government Printing Office, 1992) identified 115 resolutions that were adopted by the delegates who attended the conference on January 22-24, 1992. Among these resolutions were:

Topic 1. Governance of Indian Education/Independent Board of Education.

1-3. Therefore, be it resolved, that federal legislation be enacted to authorize all tribes that have developed the capabilities to exercise tribal authority over all federal education functions, programs, and services on their respective reservations and in Indian communities. The legislation shall provide adequate fiscal support, in accordance with P.L. 100-297, to develop, implement, and maintain tribal departments of education.

Also, that tribes have the prerogative and option, in accordance with their sovereignty, codes, and plans to receive all federal funds generated within the respective tribal jurisdiction and territories.

This authority would allow for the development of a planning process whereas tribal members would be consulted to develop codes and standards which reflect the cultural values of the respective tribes.

Other resolutions (1-4, 2-3, 2-4, 2-5, 2-7, 3-1, 3-3, 3-4, 3-5, 3-10, 3-12, 3-13, 4-1, 4-2, 4-7, 4-8, 8-1, 8-5, 8R-2, 8R-4 10-1, 11-11) expressed the desires of the delegates to have tribal sovereignty, federal trust responsibility, U.S. government to government relationship with tribes, and U.S. commitment to local tribal control of schools, They also expressed a desire for tribal leadership, direct stable financial support, uniform funding, religious freedom, local determined needs, parental participation, alternative assessment, access to relevant native language and culture instruction, and direct tribal control over educational systems.

The Executive Summary Analysis states "...the rights of tribes as sovereign nations whose relationship is with the United States first...." and that "The Federal government has a government-to-government, political relationship with tribes that is rooted in the Constitution and further strengthened by congressionally ratified treaties, Executive Orders, case law and specific and general statutes to assist American Indian and Alaska Native communities and individuals."

2. The Indian Nations At Risk: An Education Strategy for Action (U.S. Department of Education, 1991) letter of transmittal to the Secretary expressed "..four important reasons the Indian Nations are a risk as a people: (1) schools have failed to educate large numbers of Indian students and adults (2) the language and cultural base of the American Native are rapidly eroding; (3) the diminished lands and natural resources of the American Native are constantly under siege; and (4) Indian self-determination and governance rights are challenged by the changing policies of the administration, Congress, and the justice system."

The report recommended the federal government "promote legislation that will require.....schools to include the participation of tribes, Native communities, and parents of Native children in the development, implementation, and evaluation of local, state and federal plans."

The report recommended tribal governments and Native communities "promote tribal/community responsibility and accountability for the education of all students." and "establish tribal/community education plans that define strategies necessary to carry out those purposes."

The Task Force recommended five strategies for improving schools:

1. Develop comprehensive education plans,
2. Develop partnerships,
3. Emphasize four national priorities,
4. Create mechanisms for accountability, and
5. Foster understanding of relationships between tribes and all levels of government.

The Task Force review of research and good practice revealed the following:

1. Emphasize early childhood education and training for parenthood,
2. Encourage Language Development,
3. Ensure a school environment conducive to learning,
4. Improve the quality of teachers and teaching,
5. Provide a challenging and culturally appropriate curriculum,

6. Implement partnerships between schools and parents, social service agencies, and business and industry,
7. Institute systemic change and provide educational leadership, and
8. Ensure accountability.

The conclusion stated that "Tribal groups must develop educational structures built on their cultural priorities.."

These two recent reports along with P.L. 93-638 (as amended) and P.L. 100-297- Title V-Part B (as amended) clearly reinforce Congresses declared policy of:

1. U.S. obligation for Indian self-determination,
2. Congressional commitment to Indian trust responsibility,
3. Congressional goal of providing tribes and communities with resources to achieve self-determination,
4. Congressional affirmation of special and unique educational needs of Indian people,
5. congressional commitment to federal relations with Indian Nations, and
8. Congresses rejection of unilateral termination of federal relations with Indian Nations.

PROPOSED PLANNING PROCESS FOR TRUE GOVERNMENT-TO-GOVERNMENT RELATIONS

The Association of Community Tribal Schools review of these recent reports and statutes conclude that it is time to start the planning process which will lead to direct government-to-government relations with the tribal nations and the Untied States Congress. The proposed planning process is within the ACTS mission (ACTS, Organizational Information Packet, 1992) of:

> "Assisting community Tribal schools toward their mission of ensuring that when students complete their schools they are prepared for lifelong learning and that these students will strengthen and perpetuate traditional tribal societies."

This planning process has these key guiding principals:

1. The tribal governments that have elementary and/or secondary schools funded by the Bureau of Indian Affairs will determine final implementation.

2. The tribal governments that have elementary and/or secondary schools funded by the B.I.A. will be involved in all aspects of the planning process.

The key elements of the planning process are:

1. An advisory panel will be appointed to oversee and manage the planning process. The panel will include representatives from tribes and schools who have children funded by the BIA through the Indian School Equalization Program. (appoint 5 president, 5 house, 5 senate, - geographic from tribes, school board and school staff). The panel will control the final vote.

2. An independent agency, knowledgeable in school finance, will determine the revenue needs of tribal elementary and secondary schools based on the special and unique needs of the Indian students in the schools.

3. A mandatory contract, to national and regional organizations knowledgeable in tribal school operations, will be let to determine the maximum education standards required for the tribal schools based on tribal codes of education. These standards will be used to determine revenue needs of the schools.

4. In the event the BIA does not implement 2 and 3 above, the advisory panel will develop an independent agency reporting directly to congress for budgets and assume responsibility for monitoring of schools and hiring necessary minimal staff for the agency. The independent agency will be managed by Trustees comprised of 15 people, of which 6 will be from schools, 6 tribal government appointees, 2 from the house and senate (ex officio and non-voting), and 3 others. The trustees will be geographically distributed.

5. The initial decision to implement the independent agency will rest with all schools currently funded by BIA-OIEP Indian School Equalization program funds. The schools will have one vote and the vote must be authorized by tribal resolution.

6. In the event the initial vote does not pass, a second vote will be conducted with only the schools who have a contract or grant for the operation of elementary and/or secondary schools from the BIA. The schools will have one vote and the vote must be authorized by tribal resolution. The tribes/schools that vote in the affirmative will be allowed to transition into the independent agency.

TIMELINE:

October 1, 1993 - December 30, 1993
The advisory panel will be appointed.

October 1, 1993 - March 30, 1994
The school finance study will be conducted.

October 1, 1993 - June 30, 1994
The mandatory contract will be completed.

July 1, 1994 - June 30, 1996
The BIA will be allowed time to implement recommendations from the study and contract.

July 1, 1996 - June 30 1997
The advisory panel will develop independent agency and conduct the vote.

July 1, 1997 - June 30 1998
The independent agency will be transitioned into existing federal budget cycle.

July 1998
Tribal schools will become part of the independent agency.

WHY THIS IS NOT THE BUREAU OF INDIAN EDUCATION OR THE INDEPENDENT BOARD OF INDIAN EDUCATION

We are aware that the delegates to the White House Conference on Indian Education rejected the establishment of an independent Board of Indian Education that would have assumed the responsibility for all existing Federal programs relating to the education of Indians.

We are also aware that the BIA Reorganization Task Force has rejected a Bureau of Indian Education within the Department of Interior that would have assumed the responsibility for all existing BIA education programs.

THE PROPOSED AGENCY WOULD NOT ASSUME RESPONSIBILITY FOR ALL EXISTING FEDERAL PROGRAMS RELATING TO THE EDUCATION OF INDIANS.

THE PROPOSED AGENCY WOULD NOT ASSUME THE RESPONSIBILITY FOR ALL EXISTING BIA EDUCATION PROGRAMS.

THE PROPOSED AGENCY WOULD NOT BE FORMED IF THE BIA PROVES COMPETENCE IN BUDGET FORMULATION BASED ON SPECIAL AND UNIQUE NEEDS OF INDIAN CHILDREN IN TRIBALLY CONTROLLED ELEMENTARY AND/OR SECONDARY SCHOOLS.

THE PROPOSED AGENCY WOULD ASSUME RESPONSIBILITY FOR ONLY THOSE TRIBALLY CONTROLLED ELEMENTARY AND/OR SECONDARY SCHOOLS THAT APPROVE THE FORMATION OF THE AGENCY.

THE PROPOSED AGENCY WOULD PROVIDE A DIRECT GOVERNMENT TO GOVERNMENT RELATIONSHIP FROM TRIBAL GOVERNMENTS TO THE U.S. CONGRESS.

ATTACH. C from " 4/94

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OFFICE OF CONSTRUCTION MANAGEMENT
CONSTRUCTION 14X2301 - FUND 10000
FY 1993 CARRYOVER BALANCES
REPORT ID: BIARN18P

[redacted] AREA	NEW SCHOOL CONSTRUCTION 112/111	EMPLOYEE HOUSING 113/190	FACILITIES I & R 114	LAW ENFORCEMENT 115	EMERGENCY SHELTERS 116	PROJECT CONSTRUCTION 121	ENGINEERING/ SUPERVISION 122
ABERDEEN		126,919.78	908,036.74			39,256.26	19,177.95
ANADARKO			145,146.23				
BILLINGS	1.00	74,362.36	1,322,482.64			1,301,862.43	240,056.65
JUNEAU							
EDUC		(7,324.66)	189,679.70				
MINNEAPOLIS		1,071.91	(44,954.66)				
MUSKOGEE			107.51				
PHOENIX		73,022.81	875,838.37			1,382,097.37	105,599.50
SACRAMENTO	(1,000.00)						61,548.50
K	51,324.81	(338,863.75)	44,635.98	2,368,148.25	(566,375.12)		46,271.15
K400							3,663,197.82
K600	9,369,281.38	833,229.00	13,869,157.06	6,820,407.85	327,261.56		
ALBUQUERQUE		62,788.52	1,355,948.36			460,623.82	55,552.25
NAVAJO	3,050.80	1,682,526.33	1,075,015.30			364,882.05	336,151.64
PORTLAND			457,788.94			1,000.00	1,034,328.42
EASTERN	216,729.37	9,478.49	1,018,007.36				2,922.92
UNDISTRIBUTED	46,172,283.66	451,722.43	27,036,410.90	545,851.00	2,256,006.00	510,862.20	
TOTAL PRG. CLS.	65,802,571.11	2,969,133.22	48,253,500.47	9,734,407.10	2,016,892.44	4,050,584.13	5,564,826.81

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OFFICE OF CONSTRUCTION MANAGEMENT
CONSTRUCTION 14X2301 - FUND 10000
FY 1988 CARRYOVER BALANCES
REPORT ID: BIARN18P

[redacted] AREA	SURVEY & DESIGN 123	SAFETY OF DAMS 124	FISH HATCHERIES 130/170	ROAD CONSTRUCTION 140\142\144	CONTRACT SUPPORT 150	ADVANCE PLANNING & DESIGN 151/113	TELECOM. I & R 152/117	FACILITIES I & R 153
ABERDEEN	0.79	2,318.80		(22,081.83)			532.06	51,700.24
ANADARKO				114.85			7,630.24	
BILLINGS	(620.36)	(10,494.64)		16,414.60			2,192.11	32,783.28
JUNEAU				3,975.43			8,090.37	
EDUC		(201.38)	(775.08)					(3,184.30)
MINNEAPOLIS			25,000.00	(5,632.97)	(1,656.00)	6,027.22		
MUSKOGEE				1,203,914.00			8,667.89	
PHOENIX	52,250.00	31,792.62	18,223.42	(46,359.33)		(1,125.91)	40,099.55	7,109.05
SACRAMENTO	8,512.57	348.00		1,164.75				
K	11,815.00	(186,436.58)		2,654.12		(338,883.75)	41.74	
K400	480,411.60	687142.67		60,537.00				
R800					92,712.00	5,870,568.93	99,921.96	223,079.00
ALBUQUERQUE		19,825.16		1,890.21	40.00	41,079.63	(15,319.28)	60,897.54
NAVAJO		(4,383.80)		215,150.77			74,732.56	17,352.59
PORTLAND		(4,185.54)	41,483.99	8,759.97	8,855.00	639.66	6,896.24	178,948.16
EASTERN				162,923.09	10,369.00	6,304.00	9,582.86	(2,713.82)
UNDISTRIBUTED	607,628.00	51,209.00	732,548.75				443.00	1,794,174.00
TOTAL PRG. CLS	1,159,996.63	587,822.44	816,481.08	1,603,244.66	110,321.00	5,584,827.78	244,081.31	2,360,145.94

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OFFICE OF CONSTRUCTION MANAGEMENT
CONSTRUCTION 14X2301 – FUND 10000
FY 1993 CARRYOVER BALANCES
REPORT ID: BIARN18P

AREA	UNKNOWN FY92 ONLY 154	LAND ACQUISITION 160	SELF GOVERNANCE COMPACTS 180	EMERGENCY RESPONSE 190	TOTAL APPROPRIATION FUND 10000
ABERDEEN	(0.25)				1,126,880.87
ANADARKO			33,210.00		186,101.32
BILLINGS					2,979,050.08
JUNEAU			(3,345.00)		9,320.80
EDUC				(18,529.60)	159,664.68
MINNEAPOLIS			(17,500.00)		(37,643.50)
MUSKOGEE					1,212,689.40
PHOENIX			264.00	2,332,432.12	4,871,213.57
SACRAMENTO				3,585.83	74,059.65
K	(80,711.00)				1,006,240.85
K400					4,891,298.92
K600					37,495,818.76
ALBUQUERQUE					2,049,134.23
NAVAJO					3,765,378.33
PORTLAND			(383,903.00)		1,350,611.84
EASTERN					1,433,803.49
UNDISTRIBUTED		402.78			80,189,529.71
TOTAL PRG. CLS.	(80,711.25)	402.78	(371,274.00)	2,317,488.35	142,714,740.80

BUREAU OF INDIAN AFFAIRS
FISCAL YEAR 1994
DISTRIBUTION OF ALLOTMENTS AND SUBALLOTMENTS
AS OF APRIL 1, 1994

FY	FUND	PROGRAM CLASS	TITLE	APPORTIONMENTS ISSUED YEAR-TO-DATE	YEAR-TO-DATE ALLOTMENTS	YEAR-TO-DATE SUBALLOTMENTS	FUNDS NOT SUBALLOTTED	TOTAL OBLIGATIONS	UNOBLIGATED BALANCES	PERCENT OBLIGATED
94	[illegible]	111	ADVANCE PLANNING & DESIGN		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
94	[illegible]	112	NEW SCHOOL CONSTRUCTION		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
94	[illegible]	113	EMPLOYEE HOUSING		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
94	[illegible]	114	EDUC FACILITIES I&R		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
94	[illegible]	115	LAW ENFORCEMENT		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
94	[illegible]	116	EMERGENCY SHELTERS		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
94	[illegible]	117	PUBLIC SAFETY FACIL I&R		[illegible]	0	[illegible]	0	[illegible]	[illegible]
94	[illegible]	121	PROJECT CONSTRUCTION		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
94	[illegible]	[illegible]	ENGINEERING/DESIGN/PERSONNEL		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
94	[illegible]	[illegible]	SURVEY & DESIGN		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
94	[illegible]	[illegible]	SAFETY OF DAMS		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
94	[illegible]	130	FISH HATCHERIES		[illegible]	[illegible]	0	[illegible]	[illegible]	[illegible]
94	[illegible]	141	ROAD CONSTRUCTION		[illegible]	0	[illegible]	[illegible]	[illegible]	[illegible]
94	[illegible]	[illegible]	TELEPHONE IMPROVEMENT & REPAIR		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
94	[illegible]	[illegible]	FACILITIES IMPROVEMENT/REPAIR		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
94	[illegible]	[illegible]	BENNETT FREEZE AREA		[illegible]	[illegible]	0	0	[illegible]	[illegible]
94	[illegible]	[illegible]	LAND ACQUISITION		100,000	100,000	[illegible]	[illegible]	[illegible]	[illegible]
94	[illegible]	[illegible]	SELF GOVERNANCE COMPACTS		[illegible]	[illegible]	0	[illegible]	[illegible]	[illegible]
94	[illegible]	[illegible]	CONTRACT SUPPORT		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
94	[illegible]	[illegible]	EMERGENCY RESPONSE		[illegible]	[illegible]	0	[illegible]	[illegible]	[illegible]
SUBTOTAL CONSTRUCTION				[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

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INVESTMENT
SERVICES

Norwest Investment Services, Inc
Public Finance Division
1400 Norwest Center
Minneapolis, Minnesota 55479-0140
612/667-8342

April 20, 1994

Mr. Don Weisen
Lac Courte Oreilles Ojibwa School
Route 2, Box 2800
Hayward, WI 54843

Dear Don

I wish to extend my thanks to you for taking time out of your schedule to speak with Bob de la Vega and me about the current legislation introduced in HB 6, for the purposes of creating financing opportunities for tribal schools through federal grant moneys and guarantees. We believe that the program, as outlined by you to us, has the potential to result in a great deal of financing for the various capital needs of the tribal schools.

You had asked that we describe to you the mechanism by which a tribal school could obtain financing through Norwest Banks and Norwest Public Finance. We believe the mechanism would be fairly straight forward and would consist of the following:

1. A tribal school identifies the need for a new facility or an upgrade of an old facility.

2. The tribal school contacts a representative at its regional Consortium of Tribal Schools or another approved representative to establish a budget and proceed with preliminary drawings for the facility.

3. The tribal school and its representative presents to the Bureau of Indian Affairs ("BIA") the preliminary budget and drawings.

4. The BIA approves the project, its drawings and the budget for the project, and releases to the area representative the amount of the approved financing.

5. The area representative contacts Norwest Public Finance to secure financing for the project.

6. Norwest Public Finance secures the moneys for the project using the structure approved by the BIA, which has been established in prior negotiations with Norwest Public Finance and area representatives. The moneys are deposited with a central financial trustee, such as Norwest Corporate Trust or a local Norwest Bank.

7. As work is performed on the project and a draw request is given, the trustee or local bank will visit the project to determine construction progress and will disburse funds once

satisfied that the work has been done (this is quite common in the bonding world, to have what we call a Disbursement Agent for proceeds).

8. Upon project completion, the trustee will sign a certificate that the construction has been completed. Any excess proceeds derived from savings on the construction budget would be returned to either the BIA, the area representative or possibly the tribal school for disbursement on future projects.

With regard to the structure of the financing, we believe you had mentioned that the BIA has made available for these projects an amount of $32 million per year for debt repayment on this program. This money would be appropriated on an annual basis by the Treasury. In addition, an amount of $300 million is held in trust as further security for the issue. For this analysis, we have assumed that a "AAA" rating or bond insurance, which carries a "AAA" rating, may be obtained for the financing. Based on our projections, we believe that the $32 million per year will make about $345 million available currently for projects. This amount should go a long way toward the $500 million of the tribal schools' needs. We have assumed that financing would be for thirty years, but this may be shortened if necessary.

It is expected that the initial documentation would establish the financing mechanism and the repayment provisions for the program. Hopefully, the ensuing issues would require very little change in the basic financing template, which should keep the costs of issuing the bonds to a minimum.

We at Norwest Investment Services, Inc. are very excited to assist the various Consortiums of Tribal Schools and the BIA in providing financing for this program. Many of the items and issues mentioned above will need to be refined. A suggestion might be to meet with representatives at the BIA in Washington as soon as possible to determine if additional language might be needed in the appropriations bills or if they may have alternative structures in mind which may be presented to Congress before the bills pass. I will call you in a few days to get an update on the legislation and to see if you need additional information.

In the meantime, if you have any questions about the financing program, or if you wish to have Norwest Government Relations (Bob de la Vega) assist in efforts to pass the legislation, please do not hesitate to call me at the number below.

We look forward to meeting with you.

Sincerely,

Jeff Seidel

Jeffrey Seidel
Vice President
(612) 667 5145

Jeffrey D. Seidel
Vice President
Public Finance Division

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